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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 15, 2024	)	Case No.: PSH-24-0153
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Issued: January 31, 2025

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**Administrative Judge Decision**

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James P. Thompson III, 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."<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 or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual should not be granted access authorization.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires a security clearance. In 2024, as described in further detail below, the DOE Local Security Office (LSO) obtained information that caused it to request that the Individual be evaluated by a DOE-consultant psychologist (DOE Psychologist) regarding past alcohol and drug use and whether the Individual had any mental conditions that might result in defects in judgment and reliability. The LSO also discovered that the Individual had a history of criminal charges that include, most recently, a 2021 charge for assault. Based on the information gathered by the LSO, including the results of the DOE Psychologist's evaluation, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guidelines E, I, H, and J of the Adjudicative Guidelines.

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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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of one witness and testified on his own behalf. The LSO presented the testimony of the DOE Psychologist. The Individual submitted three exhibits, marked Exhibits A through C. The LSO submitted ten exhibits, marked Exhibits 1 through 10.<sup>2</sup>

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct), Guideline I (Psychological Conditions), Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1.

Guideline E provides that “[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. “Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* Conditions that could raise a security concern include:

...

(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;

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<sup>2</sup> References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

*Id.* at ¶ 16.

The SSC recounts that the Individual admitted to the DOE Psychologist during the evaluation that he had deceived his past employer regarding his marijuana use, that he had purchased synthetic urine to falsify employer-administered drug tests during that period, and that the DOE Psychologist reported concerns regarding the Individual's admitted "dishonesty and deception with his past employer about his marijuana use" and willingness to follow stated policies. Ex. 1 at 5. The cited information justifies the LSO's invocation of Guideline E.

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 "any substance misuse[.]" which includes "illegal use of controlled substances . . ."; "illegal possession of a controlled substance . . ."; and "diagnosis by a duly qualified medical or health professional . . . of substance use disorder . . ." *Id.* at ¶ 25(a), (c)–(d). The SSC listed the DOE Psychologist's opinion that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, Text Revision*, diagnosis of Cannabis Use Disorder, Moderate, in Early Remission; the Individual's admission to marijuana use from 2005 to 2023; the Individual's admission to operating a vehicle under the influence of marijuana almost daily during the same period; his arrest and charge in 2009 for Driving While Intoxicated and Drugged; and his arrest and charge in 2009 for possession of Marijuana and Possession of Drug Paraphernalia. Ex. 1 at 5–6. The cited information justifies the LSO's invocation of Guideline H.

Guideline I provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. Conditions that could raise a security concern include "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness . . ." *Id.* at ¶ 28(b). The SSC listed the DOE Psychologist's opinion that the Individual has "antisocial personality traits, which is a condition that can hinder his reliability, judgment, trustworthiness, and integrity." Ex. 1 at 6.

Under Guideline J, "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness." Adjudicative Guidelines at ¶ 30. "By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." *Id.* Conditions that could raise a security concern include "[e]vidence (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). The SSC recited the above referenced marijuana use and the Individual's other criminal history from 2005 to 2021, the latter of which includes twelve instances of criminal conduct—the most recent being a 2021 arrest and charge of Domestic Assault, 4th Degree, Misdemeanor and a 2019 arrest and charge for Domestic Assault, 4th Degree, Misdemeanor. Ex. 1 at 6–7. The cited information justifies the LSO's invocation of Guideline J.

### 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 of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his 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.* § 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

In August 2023, the Individual submitted a Questionnaire for National Security Positions (QNSP) as part of his application for a security clearance. Ex. 9 at 77, 121. Therein, he disclosed that he had a history of using marijuana daily to "help cope with eating and sleeping" from approximately 2005 until May 2023. *Id.* at 114. He also reported two criminal charges for Domestic Assault – 4th Degree: one that occurred in 2019, which was dismissed in 2020, and one that occurred in 2021 and resulted in his acquittal after a 2022 bench trial. *Id.* at 111–13.

During a subsequent November 2023 interview with an investigator, the Individual provided the following details regarding the above criminal charges. Ex. 10 at 187, 193–94. He said that the 2019 assault charge resulted from a verbal argument with his now ex-wife during which he "removed" a cellphone from her hands and disconnected a call she made to law enforcement. *Id.* at 189, 193. Law enforcement eventually arrived and arrested the Individual. *Id.* at 193. The charges were later dismissed "because there was a house phone available" to his ex-wife and therefore the Individual did "not take away her means of communication . . . ." *Id.* at 193. Regarding the circumstances that led to his 2021 charge, the Individual reported that he was again arguing with his ex-wife, and, after he decided to leave, his ex-wife "took some" of his possessions, entered a vehicle, and would not return his property despite the Individual "banging on the windshield" to get it back. *Id.* at 194. His ex-wife then drove the vehicle towards him, and he "jumped up onto the hood to avoid being hit," breaking the windshield and injuring his wrist. *Id.*

at 194. His ex-wife then called law enforcement, and the Individual was arrested and again charged with domestic assault. *Id.*

The record includes a sheriff deputy's arrest report of the above 2021 assault that includes a slightly different version of events. Therein, the Individual is reported as telling the deputy that, as his ex-wife started to drive away, the Individual "punched the [vehicle's] windshield in frustration" *Id.* at 235. The ex-wife's statements are included in the arrest report as well. She stated that the Individual said he was going to leave during their argument, the ex-wife then "silently picked up her things and told their children to get clothes on" before entering a vehicle and locking the doors. Ex. 10 at 235. Then, the Individual "started hitting the windows," so the ex-wife began to drive away and the Individual jumped on the hood of the vehicle and punched and shattered the windshield. *Id.*

The Individual reported to the investigator that the 2021 criminal charge was "dismissed" after his ex-wife refused to testify and photographs of the Individual's injuries did not support his ex-wife's version of events. *Id.* at 194. The investigator reported that the Individual believed that his criminal charges resulted from mere arguments and not criminal conduct, and the Individual "was motivated by his instincts in the heat of the moment." *Id.* The Individual reported that he did not intend to have any more incidents with his ex-wife and that they continue to associate because they are co-parents. *Id.*

The Individual also stated the following when requesting a hearing. From 2018 to 2022, he purchased synthetic urine to falsify the results of drug tests administered by two previous employers. Ex. 2 at 13. He drove "under the influence" of marijuana during his years of use, most recently in 2023. *Id.* at 13. He was charged with assault in 2012 after he pushed a person to the ground for teasing his sister. *Id.* at 14. He was the subject of a "false" police report that alleged he punched and strangled a woman in 2011. *Id.* He was given a citation after leaving the scene of an accident where he alleges that he slid off of an icy road into a fence in 2009. *Id.* He was arrested and charged with Driving While Intoxicated and Drugged in 2009. *Id.* He was also arrested for, but not charged with, possession of marijuana and drug paraphernalia in 2009. *Id.* at 13-14. He was the subject of a police report after he and another person took a "friend's" gaming system without permission in 2008. *Id.* at 14. Lastly, he was wrongfully arrested for vandalism and theft in 2008. *Id.* at 15. He provided a written statement that many of the above acts of criminal conduct occurred when he was in his "late teenage years before [he] truly grew into an adult." *Id.* at 15.

The record includes a police report from the above-referenced 2011 assault the Individual claimed was "false." In the report, the complainant complained of being punched and "choked out" by the Individual, and the officer observed that the complainant had "a swollen lip and bruises to her left eye." Ex. 9 at 229. The officer stated that he "made contact" with the Individual and advised the Individual to "have no further contact with [the] [c]omplainant," to which the Individual reportedly replied, "[i]t's her loss." *Id.* at 229.

The record also includes information provided to the investigator by a former supervisor of the Individual. Ex. 9 at 205. That supervisor, who supervised the Individual from 2018 to 2023, reported that the Individual "had a poor attitude" and "would not follow company policies and procedures, if he did not like them." *Id.* The supervisor is reported as stating that the Individual

“would become loud and argumentative” when disagreeing, and the Individual “created a lot of drama in the workplace.” *Id.* Furthermore, the supervisor reported that the Individual “is not trustworthy[,] “his honesty and integrity are poor[,]” and his “judgment is good about 50% of the time ” *Id.* at 206.

The record includes the psychological report provided by the DOE Psychologist who evaluated the Individual. Ex. 7. During the evaluation, the Individual reported that he stopped using marijuana in order to secure his current position with a DOE contractor. *Id.* at 48. He denied using marijuana on company time when working for his previous employer. *Id.* However, he did admit that he would sometimes feel the effects of the marijuana he used the night before upon arriving at work. *Id.* He also reportedly told the DOE Psychologist that he “was always honest with his employer, other than hiding the fact that he smoked marijuana ” *Id.* The Individual “denied ever being less than honest in documenting or submitting paperwork.” *Id.* at 49. Based on the information reviewed and developed during the evaluation, the DOE Psychologist opined that the Individual had questionable honesty, and the Individual’s actions and reasoning demonstrated a “means to an end type of thinking.” *Id.* at 50–51. The DOE Psychologist concluded that the Individual had “antisocial personality traits” that can “hinder his reliability, judgment, trustworthiness and integrity.” *Id.* at 52. He based his opinion in part on the Individual’s acknowledged “lying to his employers and deception” and simultaneous denial of ever violating work policies. *Id.* at 50. To address this condition, the DOE Psychologist recommended that the Individual “should participate in individual therapy with a licensed provider experienced in treating personality disorders,” but he cautioned that “[t]reatment is not always effective, particularly if the individual cannot admit to his behaviors contributing to serious problems in life . . . .” *Id.* He gave the Individual a “guarded” prognosis. *Id.* The DOE Psychologist also diagnosed the Individual with Cannabis Use Disorder, Moderate, in Early Remission. *Id.* at 51. The DOE Psychologist recommended that the Individual participate in a substance abuse treatment program and attend maintenance group therapy sessions for one year along with support group meetings in order to demonstrate rehabilitation and reformation. *Id.* at 52.

At the hearing, the Individual’s uncle, who presently works for the same DOE contractor as the Individual, testified that he previously told the Individual that the Individual would need to stop using marijuana if he wanted to work for the DOE contractor. Transcript of Hearing, OHA Case No. PSH-24-0153 (Tr.) at 15–16. The uncle testified that, while he does not see the Individual every day, he believes that the Individual stopped using marijuana in June 2023 based on their conversations. *Id.* at 17–18. The uncle also testified that the Individual overcame the challenges associated with his past marriage, including significant infidelity by the now ex-wife. *Id.* at 18–19.

The Individual testified that the criminal charges he received prior to 2009 were the result of “hanging out with . . . troublemakers.” *Id.* at 29. As for the August 2011 charge for domestic violence, he testified that he recently contacted the authorities after he received the Notification Letter to research the incident, he then obtained the name of the complainant and contacted her, and she told him that she did not recall making the police report. *Id.* at 31–32. He testified that he did not recall putting his “hands on her,” and, while he and the complainant had previously been in a relationship, he believed they were not in a relationship at the time the police report was filed.

*Id.* When asked to clarify whether he denied the allegations or could not recall the incident, the Individual responded that he could not recall whether it happened. *Id.* at 34.

Regarding the 2012 assault charge, the Individual testified that a young man made him mad by being disrespectful toward the Individual's younger sister. *Id.* at 37. When the Individual, who was himself approximately twenty-one years old, confronted the man, the man responded by throwing a punch, which the Individual stated he "caught" and then pushed the man to the ground, ending the altercation. *Id.* at 37. The Individual denied ever hitting the man. *Id.* at 39. The day after the incident, the police informed the Individual he was charged with assault. *Id.* at 37–38. As a result, the Individual paid a fine to resolve the charge. *Id.* at 38.

Regarding the 2019 domestic violence incident,<sup>3</sup> the Individual testified that he had just learned that his ex-wife had been "having multiple affairs."<sup>4</sup> *Id.* at 39. During the ensuing argument, the ex-wife asked the Individual to leave, and he went to retrieve his money from her purse. *Id.* The ex-wife asserted that the money belonged to her. *Id.* at 41. As a result, the ex-wife's father "got involved" by grabbing the Individual, and the Individual pushed the father, which resulted in the ex-wife "pepper spray[ing]" them and calling the sheriff's department. *Id.* at 40. The Individual admitted that he had his ex-wife's wallet and keys in his pocket when law enforcement arrived but blamed it on being pepper sprayed. *Id.* at 42. The Individual testified that this is also the incident where he took a cell phone out of his ex-wife's hands to prevent her from calling the sheriff's office. *Id.* at 44.

The Individual explained that his June 2021 criminal charges also resulted from an argument with his ex-wife regarding infidelity. *Id.* at 46. The Individual testified that he was upset by his ex-wife's behavior during the argument, so he began to leave. *Id.* In response, his ex-wife took some of his belongings, including his keys, wallet, and marijuana, and began to leave in a vehicle. *Id.* The Individual stated that he attempted to stop her and demanded his items back, which resulted in his ex-wife almost hitting him with the vehicle.<sup>5</sup> *Id.* He said that she then called law enforcement and falsely claimed that the Individual had "punched the windshield out" with his fist. *Id.* at 47.

Regarding his marijuana use, the Individual testified that he stopped consuming marijuana in 2023 because he knew that behavior would prevent him from obtaining a security clearance. *Id.* at 52. He testified that since he stopped using marijuana, he has been more clearheaded. *Id.* He testified that he is focused on taking care of his children and bettering his life, and he does not intend to use marijuana again regardless of whether he obtains a security clearance. *Id.* at 53. He testified that he now spends his free time with his children and doing other outside activities. *Id.* at 60.

The Individual testified that he is in a new relationship and that his current girlfriend has yelled at him on occasion in front of the child he has with his ex-wife. *Id.* at 57. He also confirmed that his current girlfriend has hit and kicked him in the past. *Id.* at 82. He described having to contact the

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<sup>3</sup> The Individual initially described these events as occurring in March 2019 but later stated that they are related to the 2018 charge. Tr. at 44.

<sup>4</sup> The Individual testified that they got married in 2014 and divorced in 2022. Tr. at 30–31.

<sup>5</sup> The Individual testified that "she put it in drive and I jumped up, 'cause she was going to run me over." Tr. at 47.

police after his girlfriend hit him to make sure he was not arrested despite being the victim. *Id.* at 82. However, he testified that she has not physically assaulted him since the psychological evaluation in March 2024, and they are “trying to work things out.” *Id.* at 82–83.

The Individual next testified about some of the prior criminal charges in the SSC, including a 2009 charge for vandalism and theft of a skateboard. The Individual denied vandalizing a home, but he admitted that he was riding a skateboard owned by a resident of that same home when police arrived. *Id.* at 87. He denied stealing the skateboard. *Id.* He stated that he offered to help the skateboard owner clean the house in exchange for the owner writing a statement that the Individual did not steal the skateboard. *Id.* at 88. The owner agreed, and the case was dismissed in court. *Id.*

The record includes the results of a random drug test from October 2024 that the Individual underwent as a part of his employment, and the results were negative for marijuana use. *Id.* at 61; Ex. A. The record also includes the negative results of a similar drug test undergone in July 2023. *Id.* Regarding his falsification of his previous employer’s drug tests, the Individual testified, in detail, how he purchased and used synthetic urine approximately three times in order to pass drug tests administered by two different employers. *Id.* at 62–64. He testified that he did not falsify his most recent drug test for his current employer nor did he have the opportunity because the procedures were more stringent. *Id.* at 66.

Regarding the opinions and recommendations in the DOE Psychologist’s report, the Individual testified that he did not follow any of the recommendations for addressing the diagnosed Cannabis Use Disorder because he had already stopped consuming marijuana in June 2023 with no intention of smoking it again, and therefore approximately eighteen months had passed since his last use. *Id.* at 67–69. He also testified that he disagreed with the DOE Psychologist’s opinion that he exhibited antisocial characteristics and testified that he puts everybody else’s needs above his own. *Id.* at 69. The Individual testified that he did not follow the recommendation for individual therapy because he was too busy taking care of his children. *Id.* at 70. When asked about antisocial characteristics, such as failure to obey laws and norms and use of deception in relation to his history of falsifying drug tests, the Individual testified that one of his employers knew that he was using synthetic urine to pass the test and did not care that he smoked marijuana so long as he did not come to work impaired. *Id.* at 71.

Regarding the supervisor’s statement to the investigator, the Individual testified that the information provided by the supervisor<sup>6</sup> is full of falsehoods. *Id.* at 73. He denied the allegations and supported his denial by stating he did not have any write-ups on file and that he was promoted from hourly to salary pay. *Id.* at 73–74. He testified that he ultimately left the company because he and the owner “had got into it more than one time”<sup>7</sup> and “the hours weren’t steady.” *Id.* at 75. The Individual testified that “they just had issues” with him and he, in turn, “had issues with them.” *Id.* at 76.

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<sup>6</sup> The Individual referred to this person as an “office manager.” Tr. at 73.

<sup>7</sup> In one instance, the Individual testified that the owner argued with him and told him he was fired when he failed to successfully repair a machine that was the responsibility of another worker. Tr. at 75. The Individual testified that he kept his “hands in [his] pocket ‘cause [he] wasn’t going to get charged with assault or nothing with him.” *Id.*



The DOE Psychologist testified that, while the Individual's Cannabis Use Disorder is in sustained remission because the Individual has not used marijuana in approximately eighteen months, the condition is not rehabilitated or reformed because the Individual did not engage in any treatment the DOE Psychologist recommended. *Id.* at 94–95. The DOE Psychologist based his opinion on the fact that the Individual did not demonstrate “an understanding of the addiction process” and therefore does not “have the tools to use to try to fight those urges” if he encounters them in the future. *Id.* at 95. However, the DOE Psychologist did acknowledge that the Individual had been able to refrain from marijuana use despite relationship struggles with his current girlfriend. *Id.* at 103. He testified that the Individual's prognosis was “average,” meaning “better than fair, but not as high as very good.” *Id.* at 107. With regard to the Individual's antisocial personality traits, the DOE Psychologist testified that these traits likely contributed to the Individual's failure to follow the recommendation for treatment. *Id.* at 98–99. The DOE Psychologist explained that his opinion regarding the Individual's mental condition is based on evidence of the Individual's “failure to obey laws and norms, the lying, deception, and manipulation, the impulsive behavior, the irritability and aggression.” *Id.* at 98. The DOE Psychologist concluded that the Individual continues to have antisocial personality traits, but he upgraded the prognosis from “guarded” to “fair” based on some of the changes the Individual described, including avoiding legal issues and self-inflicted “life changing difficulties” *Id.* at 98, 105.

## V. ANALYSIS

### A. Guideline E Considerations

Conditions that can mitigate security concerns based on personal conduct include the following:

- (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.

I conclude that none of the above mitigating conditions apply to resolve the Guideline E concerns.

Paragraph 17(a) does not apply to resolve the concerns because this factor is applicable to mitigate the deliberate provision of false information on forms used to conduct investigations or the deliberate provision of false information to government representatives. *See id.* at ¶ 16(a). Here, the allegations contained in the SSC are not based on the Individual providing false information on a security questionnaire or similar form used to conduct investigations nor to an official government representative.

Paragraph 17(b) is inapplicable because there is no evidence that the Individual's conduct was caused or contributed to by advice of legal counsel or any other person.

As for ¶ 17(c), I conclude that the severity of the Individual's behavior, the passage of time since it occurred, the frequency of the behavior, and the circumstances surrounding it do not demonstrate that his behavior is unlikely to recur. His intentional falsification of the drug tests and violation of his employer's rules occurred between 2018 and 2023, which represents approximately five years. The significant effort he took to overcome drug tests in order to continue using marijuana demonstrates significant, planned deception to violate his employer's rules. This conduct is especially concerning given that the U.S. Government relies upon drug testing to ensure compliance with its law, rules, and regulations regarding, among other things, eligibility for a security clearance. Furthermore, only approximately two years have passed since he last falsified a drug test in 2023, and, as will be discussed further below regarding Guideline J, the evidence in the record does not remove my concern that the Individual has not yet acknowledged the severity of his conduct and accepted full responsibility for it. For example, he testified that one of his employer's owners knew he was attempting to circumvent the drug test. However, even if I were to accept that as true, he still intentionally used deception to avoid the consequences that would result from a positive result for either employer. And the record includes his past supervisor's specific statements of concern regarding the Individual's rule violations and questionable judgment and reliability. Regarding the frequency of his behavior, the Individual admitted to repeating the conduct each time he had a drug test, which demonstrates a pattern. Lastly, there is no evidence to indicate the circumstances of his behavior were unique. The Individual chose to deliberately conceal his inappropriate behavior each time, and the Individual was then, as he is

now, required to undergo employer directed drug testing in order to demonstrate that he is in compliance with his organization's rules and policies against drug use.

I also conclude that ¶ 17(d) does not apply to resolve the concerns. I remain concerned that the Individual has not taken sufficient steps to address the stressors, circumstances, or factors that contributed to his untrustworthy and unreliable behavior. Because the Individual did not indicate any stressors or circumstances that led to him intentionally deceive his employer, I am unable to assess whether or not he has addressed them.

The remaining conditions do not apply to resolve the Guideline E concerns for the following reasons. Paragraph 17(e) is inapplicable because there is no allegation in the SSC that the Individual's conduct created a security concern due to his particular vulnerability to exploitation, manipulation, or duress. Paragraph 17(f) is inapplicable because there is no evidence in the record to indicate that the information cited in the SSC under Guideline E is unreliable. Lastly, ¶ 17(g) is inapplicable because the Individual's association with persons involved in criminal activities is not at issue. Accordingly, I find that the Individual has not resolved the Guideline E concerns.

## **B. Guideline H Considerations**

Conditions that can mitigate security concerns based on drug involvement and substance misuse include the following:

- (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.

I find that none of the mitigating factors apply to resolve the Guideline H concerns. First, under ¶ 26(a), even if I were to credit the Individual's evidence that he has not used marijuana since June 2023, that only represents approximately eighteen months of abstinence after almost eighteen years of daily use during which he willfully deceived at least two employers by falsifying the same types of drug test results he now puts forward to support his testimony. Even setting aside the credibility issues, I conclude the passage of time given the circumstances is very brief and provides little confidence that the Individual's asserted change in behavior will continue. The frequency of his drug use also fails to mitigate the concerns because it is undisputed that he used marijuana daily until relatively recently; therefore, his drug use was not infrequent. Finally, as I concluded in the previous section under Guideline E, the Individual did not put forward evidence that demonstrates that the circumstances of his behavior were unusual. Accordingly, I do not conclude that Individual's conduct is unlikely to recur based on the passage of time, frequency of conduct, or circumstances, and I remain doubtful regarding the individual's current reliability, trustworthiness, and good judgment.

I further conclude that ¶ 26(b) does not apply to resolve the concerns because the Individual has not acknowledged the severity of his drug use, nor demonstrated that he has taken actions to overcome his problem, nor established a pattern of abstinence. His lack of acknowledgement is demonstrated by his refusal to accept the diagnosis of Cannabis Use Disorder. Regarding the evidence of the Individual's recent actions, including allegedly stopping his use of marijuana and spending more time with his children, I am skeptical, generally, of the Individual's self-serving testimony given his history of using deception to avoid the consequences of his marijuana use. Furthermore, given his significant history of drug use and failure to take any of the actions recommended by the DOE Psychologist, eighteen months is too brief a period from which to conclude the Individual has established a pattern of abstinence.

Finally, I conclude that ¶ 26(c) and ¶ 26(d) do not apply to resolve the concerns. Since the concerns are not based on abuse of prescription drugs, ¶ 26(c) is patently inapplicable. Furthermore, ¶ 26(d) is inapplicable because the Individual did not enroll in nor complete a drug treatment program, and the Individual did not receive a favorable prognosis from the DOE Psychologist.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline H security concerns.

### **C. Guideline I Considerations**

Under Guideline I, the following relevant conditions can mitigate security concerns associated with a psychological condition:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

I find that none of the above conditions apply to resolve the Guideline I concerns. Because I rely upon much of the same evidence in analyzing all five of the above mitigating factors, the following analysis addresses them together. While the DOE Psychologist opined that the Individual's condition could be improved with treatment, the Individual has not received any treatment or entered into or completed any counseling to address his condition. Furthermore, there is no evidence in the record to establish that the condition was temporary. Lastly, the DOE Psychologist did not give a positive prognosis or opine that the Individual's condition is under control or has a low probability of recurrence. Accordingly, I conclude that the Individual has not resolved the concerns that derive from his antisocial personality traits, which is a condition that can hinder his reliability, judgment, and trustworthiness.

#### **D. Guideline J Considerations**

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (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 find that none of the above mitigating conditions apply to resolve the Guideline J concerns. I first note that neither ¶ 32(b) nor ¶ 32(c) apply to resolve the security concerns. There is no evidence that the Individual was pressured or coerced into committing criminal conduct, and, aside from a

few instances, the Individual does not dispute that he committed the acts identified in the SSC even if he disputes that his admitted actions rose to the level of criminal conduct.

Regarding the remaining two factors, ¶ 32(a) and ¶ 32(d), the evidence in the record regarding his lack of criminal charges since 2021, and his lack of illegal conduct such as driving under the influence of marijuana since 2023, is offset by his long history of criminal conduct and his continuing tendency to minimize his conduct, which leaves me doubtful regarding his rehabilitation, reliability, trustworthiness, and good judgment. I first note that approximately three and a half years have elapsed since his most recent criminal charge for Domestic Assault. Since then, it appears that he has maintained positive employment, and, since 2023, he has allegedly maintained sobriety from illegal drug use and avoided being implicated in any criminal conduct. There is therefore evidence of a passage of time without recurrence of criminal activity.

However, I must also consider evidence that weighs against mitigating the concerns. His criminal conduct spans approximately eighteen years, and there is no evidence that unusual circumstances are to blame for his conduct. There is, however, significant evidence in the record of his tendency to minimize his involvement in criminal conduct, which I find concerning. He denied assaulting a woman in 2011 and stated that he contacted her and she could not recall filing the police report. He also stated that he could not recall the incident. However, the Individual admitted to knowing and dating the complainant, and the report itself provides significant detail that implicates the Individual. His inability or unwillingness to provide any additional information regarding this incident demonstrates a lack of candidness, which leaves me concerned he has not accepted responsibility regarding his conduct. It seems unlikely that this complainant created the incident out of whole cloth, especially considering the reporting police officer observed injuries and spoke with the Individual, and it seems similarly unlikely that the Individual cannot recall the circumstances surrounding this incident. I have similar concerns regarding the Individual's description of the circumstances that led to his 2021 and 2019 assault charges. Regarding the 2019 charges, the Individual attempted to minimize his culpability by stating that he was merely attempting to retrieve his money from his ex-wife's wallet and the cellphone he took from her hands was actually his phone because he paid the bill. However, in doing so he took possession of the wallet of another and, irrespective of who owns a telephone, he forcefully took it from her possession in order to prevent her from contacting law enforcement. I find concerning his attempt to downplay his culpability. Furthermore, I find concerning the inconsistent accounts of what occurred during the 2021 incident where the Individual struck a vehicle windshield and injured himself. The fact that the Individual was exonerated based on the evidence presented at trial does not detract from the fact that he admitted to punching the windshield out of frustration. It also does not explain why he failed to mention an attempt to retrieve his items to the responding officer but later provided that as his motivation to the investigator and during the hearing. His continuing attempt to reduce his culpability is also exemplified in his denial of theft regarding the skateboard. He attempts to make a distinction between outright theft and taking the property of another from a front yard without permission and using it until intercepted by police. However, his efforts betray a lack of accountability and therefore does not convince me that he is unlikely to reengage in criminal activity.

Based on my above findings, I conclude that a relatively short period of time has passed since the Individual purportedly stopped engaging in criminal conduct given the context of his significant

history of criminal behavior and questionable acceptance of accountability. I also conclude that the record does not demonstrate that the circumstances surrounding his conduct were unusual. Lastly, I find that the Individual has not demonstrated rehabilitation nor resolved the doubt regarding his reliability, trustworthiness, or good judgment. I therefore conclude that the Individual has not resolved the Guideline J security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E, Guideline H, Guideline I, and Guideline J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual brought forth sufficient evidence to resolve the Guideline H security concerns set forth in the SSC. However, the Individual has not brought forth sufficient evidence to resolve the Guideline E, I, and J security concerns. Accordingly, I have determined 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.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals