

(Notification Letter), that derogatory information existed under 10 C.F.R. § 710.8 that created a substantial doubt as to his eligibility to retain a security clearance. Ex. 1. The Notification Letter also informed the Individual that his security clearance was suspended and he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. At the hearing, the DOE counsel introduced six exhibits into the record (Exs. 1-6). The Individual presented his own testimony, as well as the testimony of his mother (Mother), his wife (Wife) a high school basketball coach (Coach), and the Manager of the program where he is currently employed (Manager). *See* Transcript of Hearing, Case No. PSH-12-0072 (hereinafter cited as “Tr.”). The Individual submitted three exhibits (Exs. A-C).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (*Adjudicative Guidelines*).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.*; *see generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT AND ANALYSIS

A. Factual Findings

The underlying facts are not disputed. During the period between December 2005 and May 2006, the Individual, while attending college, smoked marijuana on approximately five to ten occasions. Ex. 4 at 14; Ex. 6 at 14-17.

In June 2007, pursuant to his employment as a student intern at an DOE facility, his employer requested that he be granted a security clearance. Ex. 4 at 15. In completing the 2007 QNSP, the Individual reported that he had not used illegal drugs since the age of 16.² Ex. 5 at 23.

During his 2012 reinvestigation, the Individual completed the 2012 QNSP, where he disclosed that he had used marijuana on approximately five to ten occasions during a period from December 2005 through May 2006. Ex. 4 at 13-14. The Individual answered “no” to the question in the 2012 QNSP which asked if the Individual had either illegally used any “controlled substances” or “intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else.” Ex. 4 at 13-14.

The Individual, during the 2012 PSI, confirmed his reported marijuana usage and further stated that he had used a half tablet of his Mother’s prescribed anti-anxiety medication on two occasions during December 2007 or January 2008 while he was employed at the DOE facility and possessed a security clearance. After the 2012 PSI interviewer explained the DOE’s concerns and policy regarding non-prescribed prescription drug use, the Individual recognized that his use of his Mother’s prescription medication violated DOE’s and his employer’s policies regarding drug use. Ex. 6 at 44-45. With regard to his negative answer in the 2007 QNSP regarding involvement with illegal drugs, the Individual disclosed that he was “probably fearful of disclosing that fact” and admitted that he had falsified his answer regarding illegal drugs in the 2007 QNSP. Ex. 6 at 37.

1. The Associated Security Concerns

The Notification Letter stated that the LSO was in possession of derogatory information regarding the Individual pursuant to 10 C.F.R. § 710(f), (k), and (l) (Criterion F, K and L, respectively). Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual’s eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such statements raise serious doubts regarding an individual’s honesty, reliability, and trustworthiness. 10 C.F.R. § 710.8(f). The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent that individual can be trusted again in the future. *See Adjudicative Guidelines*, Guideline E, ¶ 15; *see also, e.g., Personnel Security Hearing*, Case No. TSO-0727 (2009).³ In light of the fact that the Individual failed to reveal his use of marijuana in the 2007 QNSP and his improper use of his Mother’s prescription anti-anxiety medication in the 2012 QNSP, I find that the LSO had sufficient grounds to invoke Criterion F in this matter.

² The Individual actually completed an Electronic Questionnaires for Investigations Processing, an electronic version of the Questionnaire for National Security Positions (QNSP). In this Decision, I will refer to the e-QIP as a QNSP.

³ Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Criterion K relates to information indicating that an individual has used an illegal drug, such as marijuana, or improperly used a prescription medication. The use of an illegal drug or a non-prescribed prescription medication raises questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations. *See e.g., Personnel Security Decision*, Case No. TSO-0658 (2008). Given the Individual's admission in the 2012 PSI that he used marijuana and his Mother's prescribed anti-anxiety medication, I find that the LSO was justified to invoke Criterion K with regard to the Individual.

Criterion L refers to conduct tending to show that an individual was "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Adjudicative Guidelines*, Guideline E, ¶¶ 15, 16(a); *see also, e.g., Personnel Security Hearing*, Case No. PSH-12-0053 (August 3, 2012). In light of the Individual's admission in the 2012 PSI that he had used his mother's prescription anti-anxiety medication while possessing a security clearance, I find that the LSO properly invoked Criterion L.

B. Whether the Individual has mitigated the Security Concerns

1. Hearing Testimony

At the hearing, the Individual presented witnesses to establish that his youth and immaturity at the time of the 2007 QNSP, the relatively isolated nature of his illegal and prescription drug use, and the subsequent maturing of his character, mitigate the security concerns raised by the derogatory information described above. The relevant testimony regarding mitigation is summarized below.

The Individual testified that his use of marijuana occurred at age 18 during his freshman year in college, 2005. Tr. at 77; *see* Ex. 5 at 26. The Individual did not enjoy his use of marijuana and only used marijuana in social situations. Tr. at 77. The Individual believed his use was motivated by peer pressure. Tr. at 77-78. When the Individual began to date his future wife and his circle of acquaintances changed, he decided to stop using marijuana. Tr. at 78.⁴ In 2007, the Individual was hired as a student intern by his current employer and submitted the 2007 QNSP. Tr. at 81. In answering "no" to the question about illegal drug use, the Individual believed that he was "affirming that [he] wasn't a drug user." Tr. at 81. Further, the Individual failed to realize the "gravity" of providing an untruthful answer. Tr. at 82. However, the Individual was unable to precisely remember why he answered "no" to the illegal drug question but he affirmed that he took full responsibility for his actions regarding the failure to provide accurate answers in the 2007 QNSP. Tr. at 82-83.

⁴ The Individual has submitted a copy of the results of random drug tests he has been subject to while employed at the facility. Ex. A. All these tests were negative for illegal drugs.

The Individual testified that, at the time he completed the 2012 QNSP, he had matured considerably and now understood the importance of holding a security clearance and why DOE asked individuals about past drug use. Tr. at 82-83. He realized that it was important that security clearance holders were honest, reliable and trustworthy. Tr. at 83. Consequently, the Individual was determined to provide an accurate answer in the 2012 QNSP regarding his past marijuana usage. Tr. at 84.

As to his use of his Mother's anti-anxiety medication, the Individual testified that his mother gave him two prescription anti-anxiety tablets when he was suffering from a panic attack. Tr. at 88. He did not realize that his use of this medication was a violation of DOE policy until the policy was explained to him during the 2012 PSI. Tr. at 85-86. To substantiate his account of the panic attack, the Individual has submitted an contemporaneous assessment performed by a psychologist at the facility. Ex. B. The assessment diagnosed the Individual as suffering from "Adjustment Disorder With Anxiety, Rule Out Panic Disorder vs. Generalized Anxiety Disorder." Ex. B at 2. He also submitted medical records detailing his visits to a clinic to receive treatment for his anxiety disorder. Ex. B at 4. The physician prescribed anti-anxiety medication for the Individual. Ex. B at 5. The Individual also submitted an exhibit documenting his visits with a psychologist to deal with his anxiety problems. Ex. C.

The Individual testified that he has been tremendously humbled by the administrative review process. Tr. at 86. The Individual believes that he has matured greatly since the period of marijuana use. Tr. at 87. Given the life changes he has experienced, including his marriage and his greater responsibilities at work, the Individual believes that he is a different person than the person who failed to report his illegal drug use in 2007. Tr. at 87.

The Individual's Mother testified that sometime around 2006 she gave the Individual two of her prescription anti-anxiety tablets after she received a call from her daughter informing her that the Individual was having a panic attack in a local restaurant.⁵ Tr. at 52, 60. The Individual's Mother testified that the Individual experienced periods of high anxiety when he was growing up and, given her own anxiety disorder, believed that the Individual was having a panic attack at the restaurant. Tr. at 53. When she provided the tablets to the Individual, she did not believe that it was against the law. Tr. at 54. Further, the Individual's Mother testified that if she or the Individual had known that providing or using the anti-anxiety drugs were illegal, neither would have used or transferred the medication. Tr. at 54-55. During the time of the Individual's panic attack, the Individual's Mother advised the Individual to seek professional help for his anxiety disorder. Tr. at 54.

The Individual's Mother testified that she was very proud of the Individual. Tr. at 57. She believes that the Individual knows he made a poor choice in not disclosing his marijuana use. Tr. at 57. She also testified as to her belief that the Individual is a responsible person and has been a good man. Tr. at 57, 62.

The Individual's Wife testified that she met the Individual in 2006. Tr. at 64. She testified that she has a general dislike of marijuana and never had any indication that the Individual had ever

⁵ The contemporary medical records submitted by the Individual indicate that the panic attack occurred around the first week of January 2008. Ex. B at 1.

used marijuana. Tr. at 64. She discovered later that the Individual had used marijuana before they met. Tr. at 64. The Individual's Wife and the Individual were both hired by the contractor at the DOE facility as student interns in 2007 after high school. Tr. at 65. They both were given a great deal of paperwork to complete when they were hired and the Individual's Wife believes neither of them had an appreciation of how their answers on the QNSP could affect them in the future. Tr. at 66-67.

The Individual's Wife also testified that she and the Individual, since 2007, have grown into adults together and are now financially independent. Tr. at 67. The Individual's Wife testified that, overall, the Individual is very "strait edged" and always seeks to obey the rules. Tr. at 69. She believes that Individual's current maturity is demonstrated by his determination to reveal his use of marijuana in the 2012 QNSP. Tr. at 67. She also testified that the Individual now is fully aware of what it means to possess a security clearance and the absolute importance of answering questions with absolute accuracy. Tr. at 67.

The Individual's Wife was present during the Individual's panic attack which led to his use of his Mother's prescription anti-anxiety medication. Tr. at 69. At that time, she and the Individual's Mother were very concerned about the Individual since he was physically affected by anxiety. Tr. at 69-70. She only observed the Individual initially take one-half of a tablet of the anti-anxiety medication because the Individual did not want to "over do" taking the medication. Tr. at 70. Neither she nor the Individual's Mother realized that giving the Individual the medication was illegal. Tr. at 70. Afterward, the Individual decided to seek professional help for his panic attacks and to deal with his anxiety. Tr. at 70.

The Coach testified that he is the head coach at a local high school as well as a federal employee. Tr. at 10, 21. Ten years ago, at age 15, the Individual played for the Coach when he was the high school's freshman coach and later when the Coach became the head coach at the high school. Tr. at 10-11, 21. In 2007, the Coach hired the Individual to be the freshman assistant coach at the high school and subsequently promoted him in 2010 to be the head freshman coach. Tr. at 11. In 2011, the Coach promoted the Individual to be the junior varsity head coach. Tr. at 11.

The Coach testified as to the Individual's stellar record as a coach at the high school. Tr. at 14-15. He trusts the Individual not just with the duties of the freshman coach but to perform certain duties of the Coach's position. Tr. 14-15.

The Coach testified that to the best of his knowledge, the Individual's use of marijuana was restricted to the Individual's freshman year in college. Tr. at 14. The Individual has never partaken of alcohol during any social events the coaching staff attended. Tr. at 15. The Coach believes that the Individual is very trustworthy – trustworthy enough to be relied upon to develop the high school's freshman team numbering from 12 to 14 students. Tr. at 15. During the Individual's tenure as a coach, the Individual has developed a number of young men of whom are now graduating from high school. Tr. at 15-16. The Coach testified that the Individual has shown great integrity as a coach as demonstrated by the Individual basing his decisions regarding playing time on player skills and attitudes towards practice. Tr. at 16-17. The Coach has never had any complaints about the Individual "playing favorites." Tr. at 17.

The Coach testified that the Individual's integrity is demonstrated by the fact that he sought to hire the Individual in 2006 but the Individual refused the job because, at the time, he was dating a student attending the high school. Tr. 17-18. This was significant because both the Coach and the Individual knew that a coach dating a student could cause problems. Tr. at 18-19.

When the Individual's security clearance was suspended, the Individual confided to the Coach the details surrounding his suspension. Tr. at 19. The Coach found the Individual to be upright and honest regarding his description of the incidents leading to the suspension. Tr. at 19. During this discussion, the Coach asked the Individual if he had used marijuana while he was a student at the high school. Tr. at 19-20. The Individual answered "no" and the Coach believes that answer. Tr. at 20. The Coach testified that, while the Individual made a bad decision, the Individual has been forthright in admitting his poor judgment in not revealing his past marijuana use. Tr. at 21. Overall, the Coach has no doubts regarding the Individual's honesty, trustworthiness, or reliability. Tr. at 21, 26.

The Manager testified that he first met the Individual when the Individual was assigned as a student intern in his organization. Tr. at 28. The Individual continues to work for the Manager and the Manager was "shocked" when he was informed about the Individual's prior marijuana use. Tr. at 29-30. The Manager, who has prior military security experience in enforcement of illegal drug use prohibitions, believes that the Individual's use of marijuana in his freshman year of college was "experimental" and did not indicate any type of more serious involvement with illegal drugs. Tr. at 30. The Manager further testified that, with regard to the Individual's initial failure to disclose that he had used marijuana in the past, he believed that the Individual may have rationalized his prior use of marijuana by thinking, at the time, that he had not done anything inappropriate. Tr. at 32-33. In testifying to a question whether the Individual could be trusted to be open, aboveboard, and honest with the DOE, the Manager stated that the Individual's willingness to challenge assumptions at work and to provide direct, accurate, advice is an indication as to the Individual's ability, under pressure, to present the right decision based upon trust and integrity. Tr. at 38. The Manager believes that the Individual, as he gains in maturity and life experience, will demonstrate the highest level of integrity and trustworthiness. Tr. at 38.

2. Mitigation of Criterion F Concerns

As noted above, the DOE security program is based on trust, and security concerns stemming from an individual's breach of that trust are difficult to resolve. Once such a concern arises, the individual must demonstrate that he/she can now be trusted to be consistently honest and truthful with the DOE. Under OHA precedent, relevant factors include whether the individual came forward voluntarily to admit the falsifications, the length of time since the falsification, how long the falsehood was maintained, whether a pattern of falsification is evident, and the length of time since the individual revealed or corrected the falsification. *See, e.g., Personnel Security Hearing, Case No. TSO-0801 (2009); Personnel Security Hearing, Case No. TSO-0727 (2009)*. Ultimately, an individual must convince the Hearing Officer that the individual will be truthful in the future.

As to the Individual's failure to report his two-time use of his Mother's prescription medication, I find the Individual's lack of knowledge that his use of his Mother's prescribed medication constituted a violation of DOE policy indicates that the Individual did not seek to intentionally mislead the LSO when he did not report his use on the 2012 QNSP. A review of the 2012 PSI is consistent with the Individual's hearing testimony that at the time he completed the 2012 QNSP he did not know that his use of his Mother's prescription medication constituted illegal drug use. *See* Ex. 5 at 39-44 (Interviewer explaining to Individual that use of medication prescribed for others violated DOE policy regarding drug use). Further, given the Individual's admission in the 2012 QNSP regarding his prior marijuana use, it seems that the Individual would have little expectation that misleading the LSO about his limited improper prescription drug use would have affected his suitability to retain his security clearance. *See Personnel Security Hearing*, Case No. PSH-12-0066 (September 12, 2012) (discrepancies in the Individual's accounts of her past marijuana usage were such that the Individual could not have reasonably believed that her suitability to be granted a security clearance would have been materially increased by providing a somewhat lower account of her marijuana usage). In light of the mitigating factors described above, I find that the Individual has resolved the Criterion F security concerns raised by his failure to report his use of his Mother's prescription medication.

With regard to the remaining falsification, the failure to report his marijuana use in the 2007 QNSP, it is apparent from the evidence that the Individual intentionally provided a false answer in the 2007 QNSP. Further, the Individual did not correct his falsification until nine months ago. Although the length of time since an individual has disclosed the falsification is a relevant factor, that factor is considered together with all relevant factors. *Personnel Security Hearing*, Case No. TSO-1105, *slip op.* at 5. (December 21, 2011). Accordingly, the fact that the individual did not correct his falsification until relatively recently does not, standing alone, automatically mandate an unfavorable decision. *See, e.g., Personnel Security Hearing*, Case No. TSO-0987 (May 13, 2011) (individual falsified two DOE forms prior to 1991, voluntarily disclosed the falsifications eight months prior to hearing, and demonstrated a pattern of honesty and responsible behavior over twenty years indicating that the falsifications were lapses in otherwise good judgment that are unlikely to recur in the future); *Personnel Security Hearing*, Case No. TSO-0628 (November 3, 2008) (individual's voluntary disclosure during a security interview one year prior to hearing that she falsified QNSP 13 years earlier resolved due to passage of time since the falsification, the fact that it was an isolated incident, and the individual's greater maturity and proven honesty and candor). On the other hand, our precedent also makes clear that relatively recent falsifications are difficult to resolve, especially when the individual did not voluntarily disclose the falsification. *See, e.g., Personnel Security Hearing*, Case No. TSO-0937 (December 3, 2010) (individual who falsified two QNSPs seven years and two years before the hearing, respectively, and lied to an investigator during an official interview two years before the hearing, did not resolve Criterion F concerns because he demonstrated a pattern of falsification spanning seven years, only admitted the falsifications when confronted with the information, and had shown a relatively short period of responsible behavior since the falsifications); *Personnel Security Hearing*, Case No. TSO-0688 (February 18, 2009) (Criterion F concerns not resolved where individual's voluntary disclosure of falsification on QNSP regarding past drug use was outweighed by the recency of the falsification – three years prior to the hearing – and the short period of time since the individual's admission – eight months prior to the hearing).

My assessment of the evidence before me indicates that the Individual voluntarily disclosed the 2007 QNSP falsification to the LSO. This is somewhat counterbalanced by the fact that the Individual maintained the falsehood for approximately five years. Given the testimonial evidence before me, I find that, other than in regard to the 2007 QNSP, the Individual has demonstrated a five-year period of trustworthiness and reliability regarding his position at the facility and in his guidance of high school students. Further, the falsification itself was an isolated event and not part of a pattern of falsification. Significantly, I find the Individual's youth at the time of the falsification and during the period where he withheld the information to be a mitigating factor. *See Personnel Security Hearing*, Case No. VSO-0442 (August 6, 2001) (youth and the development of maturity found to be a mitigating factor regarding Criterion F security concerns). With the increased maturity of the Individual, as established by the testimonial evidence and the Individual's increased realization that security clearance holders must be painfully honest in responding security inquires, I find that the Individual will be reliable and trustworthy in the future. After weighing all of these factors, I find that the Individual has resolved the Criterion F concerns raised in the Notification Letter.

2. Mitigation of Criterion K Concerns

As to the Individual's marijuana use, I find that the Criterion K concerns associated with that use have been resolved. In this regard, I find that the Individual has demonstrated several of the mitigation factors referenced in the *Adjudicatory Guidelines* in reference to illegal drug use. Specifically, the Individual's use of marijuana was limited and occurred some five years ago and the Individual has no longer associates with the acquaintances and has changed the social environment where his marijuana use occurred. *Adjudicatory Guidelines*, Guideline H, ¶ 26 (a), (b)(1),(2). Given the Individual's maturing into a person with full adult responsibilities and the length of time since his prior usage, I find that the Individual is unlikely to use marijuana ever again.

I also find that the Individual has resolved the Criterion K concerns regarding his use of his Mother's prescription medication. I find the testimony of the Individual, his Mother, and his Wife, convincing as to the very limited nature of the Individual's use of his Mother's prescription medication. I also find that at the time the Individual's Mother provided him the tablets, the Individual was under extreme distress because of a panic attack. Further, the Individual has provided evidence as to his seeking professional help with regard to his anxiety disorder. Ex. C (record of dates and times of visits to a psychologist). Given the amount of time that has elapsed since this incident and the Individual's treatment for his anxiety disorder, I find the likelihood of the Individual experiencing a panic attack is low. More importantly, I find that the Individual now knows that use of another's prescription medication is illegal and against DOE policy. In sum, I find that the Criterion K concerns have been resolved.

3. Mitigation of Criterion L Concerns

The Criterion L security concern centers on the Individual deliberate use of his Mother's prescription medication while he possessed a security clearance. As discussed above, I find that the Individual did not know that use of his Mother's prescription medication violated DOE policy. See Ex. 5 at 39-44 (Interviewer explaining to Individual that use of medication prescribed

for others violated DOE policy regarding drug use). Further, I find that the circumstances which led to the Individual's use of his Mother's prescription medication are so unique that it is unlikely to be repeated, especially given the Individual's subsequent treatment for his anxiety disorder. *See Adjudicatory Guidelines*, Guideline E, ¶ 17(c) (mitigation factor relating to "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or happened under such unique circumstances that it is unlikely to recur . . ."). Consequently, I find that the Individual has resolved the Criterion L concerns raised by his inappropriate use of prescription medication.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual's eligibility for a security clearance under Criteria F, K, and L of the Part 710 regulations. However, I find that the Individual has presented sufficient evidence to resolve the concerns raised by the Criteria F, K and L derogatory information. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore the Individual's access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: October 25, 2012