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

In the Matter of: Personnel Security Hearing)	
)
Filing Date: July 21, 2020)	Case No.: PSH-20-0067
)
_____)	

Issued: October 1, 2020

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ 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’s access authorization should not be granted.

I. BACKGROUND

On July 12, 2011, police arrested and charged the Individual with Access Device Issued to Another Who Did Not Authorize Use, Identity Theft, Theft by Unlawful Taking, and Conspiracy-Receiving Stolen Property. Ex. 3 at 321. On May 13, 2015, the Individual signed, dated and submitted a Declaration for Federal Employment (DFE) (the May 13, 2015, DFE). Ex. 3 at 90. On May 22, 2015, the Individual signed, completed and submitted a Questionnaire for Public Trust Positions (the May 22, 2015, QPTP). Ex. 4 at 25. On September 13, 2017, the Individual signed, dated and submitted a second DFE (the September 13, 2017, DFE). Ex. 5 at 35. On September 20, 2017, the Individual signed, dated and submitted a Questionnaire for National Security Positions (the September 20, 2017, QNSP) to a Local Security Organization (LSO). Ex. 3 at 83. The Office of Personnel Management (OPM) Investigations Service conducted Triggered Enhanced Subject Interviews (TESI) of the Individual on March 26, 2018, and March 28, 2018. Ex. 5 at 47, 58; Ex. 3 at 94. After these procedures were concluded, the LSO determined that unresolved derogatory information remained in the Record which raised significant security concerns about the

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance

Individual. Accordingly, the LSO began the present administrative review proceedings on July 14, 2020, by issuing a Notification Letter to the Individual informing her that the LSO possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. The Notification Letter further informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded her request to the Office of Hearings and Appeals (OHA). 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 the Individual. *See* Transcript of Hearing, Case No. PSH-20-0067 (hereinafter cited as “Tr.”). The DOE Counsel submitted six exhibits, marked as Exhibits 1 through 6. (hereinafter cited as “Ex.”). The Individual submitted eleven exhibits, marked as Exhibits A through M.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline(s) E and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Under Guideline E (Personal Conduct), the LSO cites the Individual’s 2011 arrest and felony charge. The LSO further cites the Individual’s omissions from her September 20, 2017, QNSP, including her failure to disclose her employment at a nursing home (Nursing Home A); her resignation from that nursing home after she was suspended, and her 2011 arrest, which led to that suspension and resignation. The LSO also cites the Individual’s omission of her termination from a second nursing home (Nursing Home B) from the September 13, 2017, DFE. The LSO also cites the Individual’s omission of her terminations from a third employer, Employer C, and Nursing Home B, as well as her 2011 arrest, from the May 22, 2015, QPTP. The LSO further cites the Individual’s termination from a fourth employer (Employer D). Finally, the LSO cites the Individual’s exaggeration of the length of her commute to her supervisor at Employer D. These allegations, other than her exaggeration of the length of her commute, adequately justify the LSO’s invocation of Guideline E. Guideline E provides: “[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 information.” Guideline E at § 15. Of special interest is any failure to cooperate or provide truthful and candid answers during a national security investigative or adjudicative process. *Id.* at §17.

Under Guideline J (Criminal Conduct), the LSO cited the Individual’s 2011 arrest. This allegation adequately justifies the LSO’s invocation of Guideline J. “Criminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” Guideline J at § 30. Of particular interest is “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 . . . convicted.” Guideline J at § 31.

III. REGULATORY STANDARDS

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all of the relevant evidence, favorable or 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), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personal security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 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

On April 19, 2009, Employer C terminated the Individual's employment. Ex. 3 at 124.

On July 12, 2011, the Individual was arrested by police and charged with: Access Device Issued to Another Who Did Not Authorize Use, Identity Theft, Theft by Unlawful Taking, and Conspiracy-Receiving Stolen Property. Ex. 3 at 321. The report of arrest filed by the police indicates that the police had been investigating two thefts from residents of Nursing Home A. Ex. 3 at 193. One resident of Nursing Home A had reported that his credit card had been taken from his wallet. Ex. 3 at 193. That resident further reported that someone had obtained a PIN number for his credit card and had used it to obtain two separate cash advances totaling \$1,000. Ex. 3 at 193. The credit card company provided the Police with the phone number used to obtain the PIN number. The police found that this number belonged to the Individual. Ex. 3 at 194. The police further obtained surveillance video showing the Individual's cohabitant at a gas station at the time when the credit card was used illegally. Ex. 3 at 194. The Individual's cohabitant admitted using the stolen credit card to the police. Ex. 3 at 194. The Police Report further states that the Individual admitted that she was "guilty of taking the credit card." Ex. 3 at 194. The Police Report further noted that, after her arrest, the Individual was first transported to central booking, then transported for arraignment, where her bail was set at \$7,000, and then returned to central booking. Ex. 3 at 194. Court records indicate that the criminal charges arising from this arrest were dismissed by the Court on April 19, 2012. Ex. 3 at 322. As a result of this arrest, Nursing Home A suspended the Individual's employment. The Individual resigned from this position soon afterward.

On November 29, 2012, Nursing Home B terminated the Individual's employment.

On May 13, 2015, the Individual signed, dated, and submitted the May 13, 2015, DFE. Ex. 5 at 35. The DFE asked the respondent whether "during the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, [or] did you leave any job by mutual agreement because of specific problems?" Ex. 5 at 34. The Individual responded "no" to this question. Ex. 5 at 34.

On May 22, 2015, the Individual completed, signed, and submitted the QPTP. Ex. 4 at 25. The QPTP includes a question requiring the respondent to disclose if they had been fired from a job within the past seven years. Ex. 4 at 17. The Individual answered "no" to this question. Ex. 4 at 17. The QPTP also includes a question requiring the respondent to disclose whether they had ever been arrested or charged with any offenses. The Individual answered "no" to this question as well. Ex. 4 at 22.

On September 13, 2017, the Individual signed, dated, and submitted the September 13, 2017, DFE. Ex. 3 at 90. The September 13, 2017, DFE asked the Individual whether "during the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, [or] did you leave any job by mutual agreement because of specific problems?" Ex. 3 at 89. The Individual responded "no" to this question. Ex. 3 at 89.

On September 20, 2017, the Individual completed, signed, and submitted the QNSP to the LSO.² Ex. 3 at 82. The QNSP asked the Individual "have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement official?" Ex. 3 at 69. The Individual responded "no" to this Question. Ex. 3 at 69. The QNSP required a respondent to "List all of your employment activities, including unemployment and self-employment, beginning with the present and working back 10 years. The entire period must be accounted for without breaks." Ex. 3 at 43. The Individual omitted her employment with Nursing Home A from her response to this question. Ex. 3 at 43-55. The QNSP further required that a respondent disclose whether they had been suspended by any employer during the past seven years. Ex. 3 at 55-56. The Individual responded "no" to this question. Ex. 3 at 56. The QNSP further required that the Individual specifically disclose whether she had ever been suspended by Employer D. Ex. 3 at 50. The Individual answered "no" to this question. Ex. 3 at 50. The QNSP required that the Individual disclose why she ended her employment with Employer C. Ex. 3 at 55. The Individual did not disclose that she had been terminated by Employer C, but rather responded by stating that she left Employer C to "pursue federal employment." Ex. 3 at 55. Moreover, although the Individual had been terminated by Employer C in April 2009, the Individual's QNSP indicates that that she left Employer C in January 2010, when she began working for another employer. Ex. 3 at 55.

On November 17, 2017, Employer D terminated the Individual's employment, for conduct. Ex. 6 at 3. Among the issues of conduct documented in her file were allegations that she failed to show up for scheduled shifts, shirked her responsibilities and disappeared for lengthy periods of time while on duty, and attempted to order a work jacket with "RN" embroidered on it – and later one

² The QNSP contained a "Statement of Understanding" requiring the Individual to acknowledge that she had read the instructions, and to further acknowledge that she understood that if she "withhold[s], misrepresent[s] or falsif[ies] on this form, [she is] subject to...denial or revocation of a security clearance[.]" Ex. 3 at 35.

with “Clinician” embroidered on it – even though she was not a Registered Nurse or a Clinician. Ex. 6 at 5-9, 11-13.

Individual’s Exhibits

The Individual, a Federal employee, submitted a performance appraisal from the year 2019, which indicates she received praise from her supervisor and was honored with an invitation with then Secretary Perry. Ex. A at 7. In August 2019, the Individual received an award for her participation in preparing Hiring Event Training sessions. Ex. A at 8. Her 2015-2016 performance appraisal indicated scores from “Successful” to “Exceeds-Fully Successful.” Ex. A at 16-20. In 2014, the Individual received performance appraisals of “Fully Successful.” Ex. A at 27-28. The Individual obtained her nursing assistant (CNA) license on July 15, 2016, and appropriately renewed her license in 2019. Ex. B at 1. During the course of her employment, the Individual has received cash awards in 2016 and 2018, as well as various commendations in 2015, 2016, and 2020. Ex. C at 1-7.

The Individual is also active in her faith, as indicated by a certificate indicating the Individual completed a study on the fundamentals of faith. *Id.* at 10. The Individual recently assumed responsibility for the care of her disabled sister. Ex. D at 1. The Individual’s sister’s doctor described the Individual as trustworthy, patient, kindhearted, compassionate, and in possession of high moral aptitude. Ex. D at 1. “A family friend of forty years described the Individual as “kindhearted, compassionate, and extremely hardworking[,]” noting that the Individual “lives her with the highest integrity.” Ex. D at 2.

The Individual submitted an April 20, 2012, letter from her criminal defense attorney. That letter states, in pertinent part:

I represent [the Individual] in her criminal cases. . . . I wanted to explain the current status of [the Individual’s] cases. Her first case where she was charged with access device fraud has been dismissed. I have attached a copy of the docket to confirm this. Her second case she has been accepted onto the [Accelerated Rehabilitative Disposition (ARD) program]. . . . She will be admitted onto the ARD program on May 29, 2012. At the end of one year, her charge should then be dismissed and expunged from her record.

Ex. G at 2.

The Hearing

At the hearing, the Individual attempted to mitigate the security concerns raised by her failure to report her 2011 arrest in her QNSP, by testifying that she did not know that she had been arrested when she completed the QNSP. Tr. at 9. The Individual testified: “the reason why I answered ‘no’ is because when I asked the officer at the time, have--am I under arrest, he advised me that I was not. I was being detained for questioning and that the reason that he was putting me in handcuffs is for my protection and for his.” Tr. at 9, 16-17. She claimed that she recently became aware that her detention constituted an arrest. Tr. at 9. The Individual provided the following

testimony in order to explain why she answered “no” to a question in the QNSP asking if she had ever been charged with a felony offense:

I understand at the time to my knowledge I had never been charged with a felony offense. And so I answered in the negative. I do know now that I was. The reason why I answered ‘no’ then was because I had never been formally charged with any type of criminal offense. I never went to court indicating that I’d been charged with any felony offense and at the time of my understanding of being detained but it was an actual arrest. I was not charged with any felony offense at that time either. So it was not my understanding that I was charged with any felony offense.

Tr. at 10.

The Individual further testified that her failure to report her employment with Nursing Home A in the QNSP was “unintentional.” Tr. at 11. She testified that she did not report her suspension by Employer E in the QNSP because she was eventually reinstated by Employer E and because, she claimed, her suspension was removed from her personnel file. Tr. at 12-13, 43. The Individual claimed that she failed to report her termination by Employer C in the QNSP because that termination actually occurred in April 2009, which she claimed was outside the reporting period.³ Tr. at 13-14. The Individual claimed that she did not intend to be deceptive when she failed to answer a question in the September 13, 2017, DFE asking whether she had been terminated during the previous five years, when in fact she had been terminated by Nursing Home B during that period. Tr. at 14. The Individual claimed that she had actually provided the correct answer to that question on “page 24 of 53.” Tr. at 14. The Individual claimed that she had failed to report her termination by Nursing Home B in her May 13, 2015, DFE because “I misread the question. I had been used to the question being in the last 7 years like--like previously and I had been terminated from that position in April of 2009. So in 2015, that would have fallen within the last 7 years, if I understood the question to be in the last 5 years from 2015.”⁴ Tr. at 15. Later during the hearing, the Individual explained her failure to report her termination by Nursing Home B in the May 13, 2015, DFE by claiming that she had forgotten her employment with Nursing Home B. Tr. at 17.

The Individual testified that the allegations that led to her July 2011 arrest were false. She denied stealing the resident’s credit card. Tr. at 18-19. She further denied that she admitted stealing a credit card to the police. Tr. at 18. She testified that each of the charges leading to her arrest were dismissed and withdrawn. Tr. at 19.

Under cross examination by the DOE Counsel, The Individual claimed that she was not aware that she was arrested, but rather believed that she had been “detained.” Tr. at 38. In support of this assertion, she testified that she believed that she was not arrested because: (1) the arresting officer, she alleged, informed her that she was not under arrest, but rather, was being detained for questioning, and (2) she alleged that she had not received a Miranda warning.⁵ Tr. at 38. She

³ The question in the QNSP that required the Individual to explain why she left Employer C did not include any time limitation, but rather specifically asked for her reason for leaving Employer C.

⁴ The Individual had been terminated by Nursing Home B on November 29, 2012.

⁵ The Police Report states that the Individual had received a Miranda warning. Ex. 3 at 176-177.

admitted that, once she was taken to the police station, she became aware that she had been charged. Tr. at 40. She again noted that the charges against her had been dismissed. Tr. at 40. She further claimed that she had no reason to believe that she had been arrested. Tr. at 40. When the DOE Counsel asked the Individual about some discrepancies between her account of the July 2011 arrest and that of the arrest report, the Individual stated:

I would first state that anything and everything that was listed in that supplemental police report was inaccurate and outright falsification. That the--I have never, ever admitted that I stole anything. The records that they have that shows the person who took--used his credit card to take the \$500 [dollars] withdrawals were [sic] not me. . . . So I would say to those comments that they were all untrue. I also would like to share in--in consideration with context of the person who wrote that report was also the same person who violated my rights in the process of this listed as non-arrest, but we all know that it is [an] arrest now because he documented this information and brought it to the attention of my employer at the time, which is the reason why I was even suspended for 6 months.

Tr. at 51-52.

Under further cross-examination by the DOE Counsel, the Individual claimed that her boyfriend at the time was also having a romantic relationship with one of her co-workers at Nursing Home A, without the knowledge of the Individual. This co-worker convinced a resident of Nursing Home A to loan her his credit card, which the co-worker gave to the Individual's boyfriend at the time, who then had used the Individual's phone to establish a personal identification number (PIN) for the card, and then also used her car when he withdrew money from the ATM, which resulted in her license plate being caught on camera. Tr. at 55-56. Upon examination by the Administrative Judge, the Individual claimed that she never went to court "about anything relative to the credit card issue."⁶ Tr. at 61, 64. She further testified that her "then boyfriend is now her current husband." Tr. at 67.

Concerning her termination by Employer D, the Individual testified that she was the victim of racial discrimination. Tr. at 20. She further explained that she sought to obtain a jacket indicating that she was a Registered Nurse rather than her actual occupation of Certified Nursing Assistant because she aspired to become a Registered Nurse. Tr. at 22.

V. ANALYSIS

Guideline E Concerns

⁶ Court records indicate that the "Defendant was Present" at her arraignment for the charges resulting in her July 2011 arrest. Ex. 3 at 321.

As an initial matter, I find the Individual's assertions at the hearing that her omissions were unintentional or inadvertent are not credible. For example, I find it difficult to believe that after having been handcuffed, taken to the police station, questioned by police in an interrogation room, transported to a courtroom for arraignment, having bail set at \$7,000, and having obtained a criminal defense attorney, that it did not occur to the Individual that she had been arrested. Moreover, each of the Individual's omissions from her DFEs, her QPTP, and her QNSP served to conceal a poor employment record (she had been terminated by two employers, suspended by another employer, and resigned her position with another employer after being suspended while allegations that she had engaged in criminal activity were being investigated). Several of the Individual's omissions served to conceal allegations that she had engaged in serious criminal activity. The concerns about the Individual's trustworthiness, judgement, honesty, and reliability raised both by these omissions, and the behaviors that they concealed, were magnified by the Individual's testimony at the hearing, which I found to be deceptive and lacking in credibility.

The Adjudicative Guidelines provide that an individual may, in pertinent part, mitigate security concerns under Guideline E if "[t]he individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Guideline E at § 17(a). The Individual may also mitigate Guideline E concerns if "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." Guideline E at § 17(c).

Counsel for the Individual argued in the closing statement that the Individual made prompt, good faith efforts to correct her omissions. However, the Individual only addressed these omissions after she was confronted with them by investigators, and she continued to be less than candid at the hearing about her motives for making these omissions. There is no evidence in the record that shows the Individual came forward of her own accord to report her omissions before being confronted with the same by any investigator.⁷

Several times during the hearing when the Individual was asked about the omissions in the various documents she submitted, the Individual stated that if given the opportunity, she would answer the question correctly. Tr. at 15, 17, 49. However, the Individual has had several opportunities to disclose derogatory information that she had previously omitted, having completed and signed multiple forms over the span of years, and yet she has declined to do so. Each time she was asked whether she was arrested and charged, the Individual marked "no," and she failed to disclose terminations and suspensions on different forms. Although the Individual has attributed these omissions to various reasons, including misreading the question and forgetfulness, and although misunderstandings and lapses in memory are only human, the frequency of these omissions strip these assertions of their credibility. For example, in a 2016 interview with an OPM investigator, the Individual explained that she had not disclosed her termination from Nursing Home B because

⁷ During the hearing, the Individual disclosed that drug-related charges had been filed against her around the time of the credit card incident, for which she appeared in court. Tr. at 63-64. This case was resolved when the Individual was accepted into the Accelerated Rehabilitative Disposition (ARD) Program. Ex. G at 2. The QNSP required the Individual to disclose whether she had ever been charged with a felony or an offense involving drugs. Ex. 3 at 69. The Individual answered "no" to this question. Ex. 3 at 69. This omission was not cited by the LSO in the Notification Letter.

she had failed to recall the incident. Ex. 5 at 59. Having arguably been placed on notice and appropriately reminded of the termination, the Individual still failed to disclose she had been terminated on the DFE she completed in 2017. Ex. 3 at 89. For the foregoing reasons, I do not find that the Individual made good faith efforts to correct concealments before being confronted with the facts.

Counsel for the Individual also asks me to consider mitigating factor (c), arguing that a sufficient amount of time has passed since the forms were completed in 2017 and the incidents that took place in 2011 and 2012. The Individual's lack of credibility during her hearing testimony shows that the concerns about her trustworthiness, judgement, honesty, and reliability raised both by these omissions and the behaviors that they concealed have continued into the present. Accordingly, the alleged concerns under Guideline E did not occur so long ago. These continued omissions are not minor, as they pertained to serious concerns. The Individual has not alleged any unique circumstances under which these omissions took place, and they were not infrequent, as these omissions took place on multiple forms over multiple years. While the Individual did last complete these forms in 2017, information that could correct these omissions continued to be withheld well after 2017.

Pursuant to 10 C.F.R. 710.7(a), "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." Because the Individual has not satisfied any of the mitigating conditions under Guideline E, I find that the security concerns raised under Guideline E in the Statement of Charges have not been resolved.

Guideline J Concerns

The Adjudicative Guidelines provide that an individual can mitigate security concerns arising under Guideline J if there is "no reliable evidence to support that the individual committed the offense." Guideline J at § 32(c). The Individual has attempted to resolve the security concerns raised by her July 2011 arrest by contending that she was innocent of those charges. In support of this contention, the Individual notes that these charges had been dismissed or withdrawn, and has submitted court records showing that her husband had plead guilty to illegally obtaining and using the card stolen by the Nursing Home A resident. Ex. G at 3-4. The fact that the charges against the Individual were ultimately dismissed, approximately a year after they had been filed against her, does not preclude the possibility that she had engaged in the activity cited in the Police Report. Ex. 3 at 322. Since the Individual had not submitted any other corroborating evidence (such as the testimony of her husband) of her account of the circumstances which led to her arrest, I would have to find her testimony credible for me to conclude that the Police Report's allegation that she admitted taking the credit card was falsified; however, for the reasons set forth above, I do not find the Individual's testimony to be credible.

The Adjudicative Guidelines provide, in pertinent part, that an individual can mitigate concerns arising under Guideline J if "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." Guideline J at § 31(d). The Individual, in an effort to mitigate Guideline J concerns, has submitted records indicating that she obtained her CNA license

in 2016, received a number of commendations and cash rewards for her work performance, and stays active in her church. Ex. B at 1; Ex. C at 1-7. She has received successful performance evaluations from supervisors, and two letters recommending her as a compassionate and kind person. Ex. A 1-8, 16-20; 27-28; Ex. D. 1-2. Impressively, the Individual has assumed responsibility for the care of her severely disabled sister, and her drug-related charges were expunged after she successfully completed the ARD program. Ex. G at 2. Ex. D. at 1. Additionally, the record does not contain any evidence of any further criminal charges since 2012. However, the Individual' employment record cannot be characterized as "good." The record shows that she was terminated from her employment with Nursing Home A in 2011, was suspended from her employment with Employer E in 2012, and was terminated from her employment with Nursing Home B in 2012. The alleged circumstances under which she lost her job with Nursing Home A were particularly egregious, especially as recounted by the police report, as it indicates she used the implicit trust placed in her as an employee to gain access to the stolen credit card. Ex. 3 at 175.

Pursuant to 10 C.F.R. 710.7(a), "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." Because the Individual has not satisfied any of the mitigating conditions under Guideline J, I find that the security concerns raised under Guideline J in the Statement of Charges have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not mitigated those security concerns raised under Guidelines E and J. Accordingly, the Individual has not demonstrated that granting her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals.