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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: May 21, 2021 ) Case No.: PSH-21-0064  
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Issued: August 17, 2021

**Administrative Judge Decision**

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX 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 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 a security clearance.

**I. Background**

A DOE contractor employs the Individual in a position that requires him to hold an access authorization. As part of a security clearance investigation, the Individual was instructed to complete a Questionnaire for National Security Positions (QNSP), which required the Individual to answer questions regarding past employment and terminations, which he signed and submitted on August 27, 2019. Ex. 10. The Individual then underwent an Enhanced Subject Interview (ESI) on October 22, 2019. Ex. 12. In response to the information that was disclosed during the ESI, the Local Security Office (LSO) asked that the Individual complete a Letter of Interrogatory (LOI), which he submitted on June 3, 2020, and that the Individual undergo a psychiatric evaluation conducted by a DOE-contractor psychiatrist (DOE psychiatrist). The DOE Psychiatrist subsequently issued a report of his findings (Report) on September 13, 2020. Ex. 6; Ex. 8. Based on the information provided, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that there was substantial doubt as

<sup>1</sup> 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

to his eligibility to possess a security clearance and that he was entitled to a hearing before an Administrative Judge to resolve these doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's 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), the Individual testified on his own behalf and did not submit any exhibits. *See* Transcript of Hearing, Case No. PSH-21-0064 (hereinafter cited as "Tr."). The DOE Counsel submitted twelve exhibits, marked as Exhibits one through twelve (hereinafter cited as "Ex.") and presented the testimony of the DOE psychiatrist.

## 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 substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E and I.

Under Guideline E (Personal Conduct), "[c]onduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "[d]eliberate omissions, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility trustworthiness, or award fiduciary responsibilities[.]" Adjudicative Guidelines at ¶ 16(a).

The LSO alleged as conduct giving rise to Guideline E concerns the Individual's history of being discharged by five employers for various incidents of misconduct.<sup>2</sup> Also cited as conduct giving rise to Guideline E concerns was: (1) the Individual's statement in the QNSP that he left Employer #4 by mutual agreement after allegations of misconduct despite being told during a 2014 Personnel Security Interview (PSI) to list his departure from Employer #4 as a termination;<sup>3</sup> (2) the Individual revealed during an ESI that he had been terminated upon being discovered using a cell phone in a prohibited area, but nevertheless reported in the 2014 PSI that he had been terminated for failure to comport with Employer #2's job description responsibilities; and (3) and the Individual failed to list his termination from Employer #3 on his QNSP. Ex. 1 at 1-2.

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<sup>2</sup> Specifically, it was alleged that: (1) the Individual was terminated by an employer (Employer #1) for a safety incident despite being aware of the Employer #1's safety rules and requirements; (2) the Individual was terminated by another employer (Employer# 2) for failing a 45-day probationary period; (3) the Individual was terminated by another employer (Employer #3) for arguing with a coworker he felt was engaging in harassing behavior; (4) the Individual was terminated by yet another employer (Employer #4) for misconduct related to an accident involving a vehicle; and (5) the Individual was terminated by another employer (Employer #5) for theft.

<sup>3</sup> Pursuant to a previous security clearance investigation, the Individual participated in a Personnel Security Interview (PSI) on December 18, 2014. Ex. 11.

Under Guideline I (Psychological Conditions), “[c]ertain emotional, mental and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability, or trustworthiness[.]” Adjudicative Guidelines at ¶ 28(a). Pursuant to Guideline I, the LSO alleged that, in his Report, the DOE Psychiatrist concluded that the Individual’s history of terminations and history of numerous traffic citations indicates poor judgement, as does his refusal to acknowledge or accept responsibility for some of these events indicates an impairment of his reliability and trustworthiness.<sup>4</sup> The DOE Psychiatrist concluded that the Individual suffers from a personality condition that impairs his judgement, reliability, and trustworthiness, and further, that his prognosis is poor. Ex. 1 at 2.

### **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 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. 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**

During the 2014 PSI, the Individual was asked about his employment with Employer #4. Ex. 11 at 12. The Individual stated that he had been laid off for misconduct due to his involvement in an automobile accident while operating a government vehicle. Ex. 11 at 12. He also asserted that his fault in the matter was never proven, and when asked if he received a letter of termination, he replied that the letter offered him the chance to leave his employment voluntarily or be terminated without rehire eligibility. Ex. 11 at 13. He chose to leave voluntarily. Ex. 11 at 13. When confronted with the fact that his personnel record indicated he was “terminated for misconduct and that [he was] not eligible for rehire[.]” he denied the allegation that he was attempting to hide these

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<sup>4</sup> The Individual’s history of traffic citations was not cited in themselves as a specific security concern. *See* Ex. 1.

facts. Ex. 11 at 14-15. He stated that, in the future, he would list this incident as a termination. Ex. 11 at 15-16.

In his QNSP, the Individual admitted that he was terminated from his employment with Employer #1, explaining that he “[l]eft due to disagreement.” Ex. 10 at 13-14. During the ESI, the Individual confirmed his termination from Employer #1, stating that he was removed from the position because of the fact he had stopped his crew from continuing work on a construction site due to safety and permitting concerns. Ex. 12 at 62. The Individual denied Employer #1’s assertion that he had terminated for failing to “follow[] the rules, committing safety violations, and continuing to drill after he [had] been told to stop[.]” Ex. 12 at 62. In the LOI, the Individual again asserted that he was terminated by Employer #1 for stopping work due to “safety issues and concerns in job tasks[.]” and denied that he was terminated for his failure to follow directions, failure to stay on task, and failure to follow safety regulations Ex. 6 at 1. He also denied violating work policy and stated that he “was following laboratory procedures.” Ex. 6 at 1-2.

The Individual also indicated in the QNSP that he left his employment with Employer #2 “by mutual agreement following notice of unsatisfactory performance[.]” as he “was not meeting their expectations.” Ex. 10 at 20-21. However, in the subsequent LOI, he was confronted with the fact that he had informed an OPM investigator that he had been terminated after he was caught using a cell phone in a prohibited area despite having previously informed the LSO that he had been terminated for failing to comply with Employer #2’s job procedures during a probationary period of which he was unaware. Ex. 6 at 4. The Individual explained in the LOI that he was terminated by Employer #2 but “was let go without warning” after being told that he was not a “good fit.” Ex. 6 at 4. When the LOI asked if he knew he had violated work policy during his tenure with Employer #2, he repeated his assertion to the OPM investigator that he had informed his foreman and received permission to take a phone call regarding his daughter, which he proceeded to do on his break.<sup>5</sup> Ex. 6 at 4-5. The Individual also denied deliberately omitting information regarding the circumstances of his termination. Ex. 6 at 4.

Regarding his termination from Employer #4, the Individual stated in his QNSP that he “[l]eft [the] job by mutual agreement following allegations of misconduct.” Ex. 10 at 23. In the LOI, the Individual was confronted with the fact that he had been terminated following an investigation that determined his careless driving had caused an accident, and further, that he had “engaged in falsification, misstatement or exaggeration” during the investigation. Ex. 6 at 6. The Individual denied that the accident was caused by careless driving or inattention, stating that the truck he was driving had ongoing problems and that he exercised good judgement by attempting to control a malfunctioning vehicle. Ex. 6 at 6, 8. Further, the Individual stated that he was not proven to be at fault because “the computer on the truck had been erased prior to the investigation.”<sup>6</sup> Ex. 6 at 6. He denied deliberately omitting this termination from his QNSP, despite being told in the 2014

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<sup>5</sup> The foreman denied approving the phone call. Ex. 6 at 4-5.

<sup>6</sup> The investigation of the accident revealed that the Individual had been travelling between thirty and thirty-one miles per hour and “was not braking.” Ex. 7 at 6. It was also determined that the Individual had “engaged in falsification, misstatement, or exaggeration of facts in an investigation proceeding.” Ex. 7 at 6.

PSI that the incident should be listed as a termination, stating that he “just forgot to correct it.” Ex. 6 at 6-7.

In September 2020, the Individual underwent a psychological evaluation, and in the Report, the DOE Psychiatrist noted the abundance of driving citations issued to the Individual and stated that the Individual “evidenced an attitude of indifference to rules and defiance of authority[.]” Ex. 8 at 2. During his evaluation, the Individual recounted the facts surrounding his prior terminations. He stated that he was terminated by Employer #5 after he took and used a tool belonging to his employer for the purposes of repairing a vehicle. Ex. 8 at 4. He claimed that he had informed his manager of his intention to use the tool and that his manager had told him that the cost of the tool would be charged to his account and deducted from his paycheck, but his manager failed to take such an action. Ex. 8 at 4. As a result, the Individual was terminated for theft. Ex. 8 at 4.<sup>7</sup> The Individual also told the DOE Psychiatrist that he had resigned from his employment with Employer #3 because he was subject to harassment, although Employer #3 asserted that the Individual was terminated for arguing with his alleged harasser. Ex. 8 at 4. The DOE Psychiatrist noted that the Individual did “not feel his behaviors played a part in the terminations but that he was wrongfully accused.” Ex. 8 at 5. The DOE Psychiatrist opined that the Individual did not meet any criteria for a mental disorder in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), but that he did have “a personality condition that impairs his judgment, reliability, and trustworthiness with a pattern of repeated traffic citations and employment terminations indicating poor judgement[.]” Ex. 8 at 7. Notably, the Individual’s failure to “accept responsibility for these [incidents] indicat[es] impairment of reliability and trustworthiness.” Ex. 8 at 8.

## V. Hearing Testimony

Regarding his termination by Employer #1, the Individual testified that in his supervision of a work crew, he halted the crew’s work three times in three days due to various safety and permit concerns. Tr. at 15-18. He defended his actions to his supervisor, arguing that he was following appropriate protocol, and testified that his supervisor was unaware of the applicable procedure. Tr. at 18-20, 22, 24. The Individual stated that his supervisor told him that he was “causing a problem” and without warning, terminated him. Tr. at 22. After he was confronted with the fact that he was terminated for insubordination, the Individual went on to testify that, although the responsibility of deciding whether to proceed with the work lay with his supervisor, his supervisor “[did not] know what was going on[.]” and in this situation, it was his “neck [that was] on the line[.]” Tr. at 25-26.

During the hearing, regarding his termination by Employer #2, he provided a recounting of the circumstances of his termination materially like the explanation he provided in the LOI. Tr. at 27-29. The Individual asserted that he was given permission to go back to his vehicle to retrieve his phone to make the call in the work area, despite the prohibition against such calls. Tr. at 29-31. The Individual could not provide an explanation as to why he provided two different versions of his termination, the first that he failed to comply with Employer #2’s job procedures while being

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<sup>7</sup> Regarding his termination by Employer #5, the Individual continued to insist during the hearing that he had notified his supervisor that he was taking the tool and thought his supervisor had charged the tool to his account but was terminated the following week because his supervisor failed to act. Tr. at 45-47, 49.

unaware that he was on a probationary period and the second that he was terminated for the use of his cell phone, Tr. at 53-54.

The Individual asserted that he “[has] no idea” why he was terminated by Employer #3, indicating that he cannot remember the reason provided for his termination. Tr. at 31-33. He testified that he had informed his supervisor of a harassing coworker, and upon addressing the matter with his supervisor a second time, his supervisor “started telling [him] off, telling [him] that [he] needed to deal...with this person[.]” Tr. at 35-36. Although he had mentioned quitting in the conversation with his supervisor, he assumed he had been terminated, as he had been told there was no further need for him. Tr. at 36. When asked why his former employer’s stated reason for his termination pertained to his conduct, the Individual admitted that he had engaged in verbal conflict with his coworker, that they “were arguing back and forth.” Tr. at 36-38. Later in his testimony, the Individual stated that he had not listed this incident as a termination on his QNSP because he “thought [he] had quit.” Tr. at 55.

The Individual testified that he had caused a four-car pile-up while operating a vehicle during his tenure with Employer #4, stating that he was “at a dead stop[,]” when his brakes malfunctioned. The Individual maintained this assertion despite the fact his employer’s investigation revealed he had been traveling thirty miles an hour at impact with the other vehicles. Tr. at 39-40. When confronted with the fact he had previously reported two different reasons for the accident - a brake malfunction and a stuck accelerator, he testified that the vehicle “had accelerator and brake problems[,]” attributing this phenomenon to a malfunctioning computer Tr. at 40-42. The Individual could not explain why the investigation revealed that he was traveling thirty miles an hour, stating he was at a complete stop and tried to apply the brakes when he felt the car move forward. Tr. at 42-45. He also asserted that the investigator’s findings were incorrect, as the computer had been erased upon disconnection of the car battery. Tr. at 43-44. When asked why he had stated on his QNSP that he had left the position by mutual agreement despite being told by during the 2014 PSI by a personnel security specialist to report the incident as a termination, the Individual stated he had “no idea” that the personnel security specialist had provided him with that instruction. Tr. at 51-53.

The DOE Psychiatrist testified that, although the Individual did not meet diagnostic criteria to be diagnosed pursuant to the DSM, he does have “a condition that can impair judgement, reliability and trustworthiness.” Tr. at 69-70, 75-76. He based his opinion on the Individual’s history of employment terminations and traffic violations, stating that there “seemed to be a continual pattern that had been occurring for a number of years, and that indicated some issues around judgment.” Tr. at 70.<sup>8</sup> Further, the DOE Psychiatrist noted that the Individual never took responsibility for the events that transpired, and instead, “seemed to find a reason that someone else had caused these issues.” Tr. at 70-71. He testified that although circumstances can result in the Individual changing this sort of pattern of behavior, there is cause for concern, as this behavior had spanned decades. Tr. at 79-80. The DOE Psychiatrist did not recommend any kind of treatment, as the Individual did not seem interested and there no certainty that treatment would lead to change. Tr. at 80.

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<sup>8</sup> The DOE Psychiatrist also compared a report that was compiled in connection with a 2017 evaluation of the Individual with his own September 2020 evaluation of the Individual. Ex. 7. The DOE Psychiatrist did not find any change in the Individual’s behavior from the time of the 2017 evaluation. Tr. 71-72.

## VI. Analysis

### Guideline E

After reviewing the evidence presented by the parties, I must conclude that there is insufficient evidence to find that the Guideline E concerns raised by the Individual's employment history and his failure to provide accurate information regarding the circumstance relating to the various terminations of his employment have been mitigated.<sup>9</sup>

Significantly, I cannot find that the Individual took any significant action to attempt to resolve any omissions or falsifications prior to being confronted with them. Throughout the QNSP, the Individual either indicated that he left employment because of mutual agreement (with one exception) or provided a reason for his termination that was inconsistent with the reason provided by his former employer. The Individual only admitted to terminations after being confronted with them, and never altered the narrative that he was terminated for some reason for which he was not the cause. For example, although an investigation into the vehicle accident that ultimately resulted in the Individual's termination by Employer #4 revealed the Individual had been travelling approximately thirty miles per hour without braking, the Individual continued to assert that the vehicle he was operating was at complete stop and moved forward due to both malfunctioning brakes and a malfunctioning accelerator. Based on the information in the file, this explanation of events is less than credible. Additionally, the Individual was previously warned in the 2014 PSI by a personnel security specialist that he must list his departure from employment with Employer #4 as a termination, which he agreed to do at the time. However, he failed to do so in his 2019 QNSP. When asked why he failed to list this departure as a termination, in the manner he was previously instructed, he simply answered that he had "no idea" that he was instructed to do so.

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<sup>9</sup> The Adjudicative Guidelines provide that an individual may mitigate Guideline E concerns if:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Further, the record remains unclear as to why the Individual provided two inconsistent reasons for his termination by Employer #2. When he was asked if there was a reason for this material inconsistency, the Individual simply stated “[n]o, not that I—that [I am] aware of.” Tr. at 54. These explanations, or lack of explanations, are insufficient to mitigate the concerns raised by these inconsistent statements. As we have stated in a prior case, “[a] QNSP is an important tool in establishing whether an individual is fit to hold a security clearance, and accordingly, an applicant is held to a higher standard when completing such a form.” See *Personnel Security Hearing*, OHA Case No. PSH-21-0009 at 9 (2021) (citing *Personnel Security Hearing*, OHA Case No. TSO-0023 at 30-31 (2003)).

Additionally, I cannot conclude that the Individual’s problematic employment history and lack of candor is so minor, infrequent, or happened under unique circumstances that it is unlikely to recur and does not cast doubt on the Individual’s reliability, trustworthiness, or good judgement. At the hearing, the Individual’s statements and testimony during the clearance process and the hearing testimony were not totally credible.

After reviewing all the Guideline E mitigation factors listed in the Adjudicative Guidelines, I cannot find that any of these factors are applicable in the present case. Consequently, I cannot find that the Guideline E concerns have been mitigated.

### **Guideline I**

In my review of the evidence before me, I cannot find that the Guideline I security concerns raised by the DOE Psychiatrist’s Report have been mitigated.<sup>10</sup>

I find that the DOE Psychiatrist credibly testified that although he could not formally diagnose the Individual, the Individual suffers from a condition that casts doubt on his judgement. I find that the DOE Psychiatrist based his opinion on a solid factual foundation concerning the Individual’s varied employment history. His conclusion about the Individual’s mental condition is also supported by the Individual’s long-standing pattern of failing to take responsibility, in whole or in part, for incidents leading to his various terminations. I find that the DOE Psychiatrist’s testimony in this matter was entirely credible. Further, there was no countervailing expert testimony that

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<sup>10</sup> The Adjudicative Guidelines list the following mitigation factors for Guideline I concerns:

- (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(a)-(e).



would cause me to question the DOE Psychiatrist's opinion. A review of the Guideline I mitigating factors does not indicate that any are applicable in the present case. Consequently, I must find that the Individual has not mitigated the Guideline I concerns regarding his condition raised by the DOE Psychiatrist and his Report.

## **VII. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and I of the Adjudicative Guidelines. After considering all of the evidence, both favorable and unfavorable, in a comprehensive, common sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has not demonstrated that granting his 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 at this time. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals