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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: August 11, 2022	)	Case No.: PSH-22-0128
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Issued: October 20, 2022

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

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

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the clearance process, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which he signed and submitted on October 1, 2021. Exhibit (Ex.) 4. Among other things, the Individual was asked about his past employment, the conditions for his departure, and whether he was ever reprimanded or disciplined for misconduct in the workplace. Ex. 4. The Office of Personnel Management (OPM) subsequently conducted an enhanced subject interview (ESI) of the Individual on October 19, 2021. Ex. 4. During the ESI, the Individual disclosed further information to the OPM investigator regarding the particulars of his termination from past employment that he had not previously provided on his QNSP. Ex. 4. Based on the information provided, the Local Security Office (LSO) desired further clarification and requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual submitted on February 25, 2022. Ex. 5.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed

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

reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *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 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. *See* Transcript of Hearing, Case No. PSH-22-0128 (hereinafter cited as "Tr."). He also submitted eleven exhibits, marked as Exhibits A through K. The DOE Counsel submitted five exhibits marked as Exhibits 1 through 5 and did not call any witnesses.

## II. Notification Letter and Associated 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 of the Adjudicative Guidelines. Ex. 1.

Under Guideline E, "[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 is a "refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to... completing security forms or releases[.]" and "[r]efusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination." Adjudicative Guidelines at ¶ 15(a) and (b).

With respect to Guideline E, the LSO alleged that "the Individual had demonstrated a pattern of questionable judgement, untrustworthiness, lack of candor, and an unwillingness to comply with rules and regulations" by stating that: 1) during the ESI, it was revealed that the Individual was terminated from the employ of the fifth employer listed on the QNSP (Employer 5),<sup>2</sup> a law enforcement entity, when he denied an inmate his request to be moved to a different cell, which resulted in the inmate being assaulted by his cellmate, regarding which the Individual told the OPM investigator "that he was not aware that his conduct was an issue[;]" 2) the Individual is ineligible for rehire by Employer 5, as a 2019 Internal Affairs (IA) investigation revealed that the Individual violated Code of Conduct General Order 121.01 and a source revealed to the OPM investigator that the Individual did not complete appropriate prison movements and paperwork despite performance reviews that indicate he was counseled for this behavior; 3) the OPM investigator was informed by a source with Employer 5 that the Individual's "ability to make good

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<sup>2</sup> Employers were listed in reverse chronological order on the QNSP. The employers that appear in this decision have not been renumbered and reflect the original number assigned to them in the QNSP. Only the employers referred to in the SSC have been discussed in this decision.

decisions required improvement[,]” that the Individual “lacked interpersonal skills,” that he experienced “personality conflicts” with his colleagues, and that “honesty” and “lack of trust” may have caused the conflict with his colleagues; 4) a former supervisor with Employer 5 did not recommend the individual for a national security position because he questioned the Individual’s judgement and reliability, felt that the Individual was immature, did not have the ability to “handle sensitive, classified, or restricted information,” and alleged that he did not always complete necessary security checks and received counseling for violating security protocol; 5) while with Employer 5, the Individual opened a window, in knowing violation of security protocol, to take a delivery, which caused potential access to sensitive controls and information; 6) while in the employ of Employer 5, the Individual took a previously issued firearm in a secure area that was occupied by inmates in violation of protocol that required the Individual to unload and surrender the firearm before entering the area; 7) the Individual was previously counseled by supervisors with Employer 5 for the lack of tact he exhibited toward inmates, causing the inmates to become violent, and the Individual “would rotate to other squads to stay ahead of the issues he had caused with his previous squads”; 8) the Individual indicated that he was terminated by the sixth employer listed in the QNSP (Employer 6) because “he had made a comment that was not liked[,]” but during the ESI, the Individual disclosed that he made a statement to calm himself down while leaving a coaching session during which he was told that he was “placed on a final warning[,]” and that he was told by Human Resources that the statement was “offensive, threatening, and inappropriate which resulted in his termination” and the Individual “is not eligible for rehire”; 9) the Individual reported that he was terminated by the seventh employer listed in the QNSP (Employer 7) “due to a policy infraction,” and he revealed during the ESI that he had altered “an instant message greeting” to cheer up his supervisor, that he was later notified that this was a violation of policy, and a week later, he was terminated for a policy infraction and stated in his LOI that “he tried to apologize” and “[did not] know it was an issue[;]” 10) a source with Employer 7 told the OPM investigator that the Individual had been “written up several times for misconduct[,]” that he had received counseling for engaging in “customer abuse,” that the Individual was “combative with authority” that he was disrespectful to a woman conducting employment training, and indicated that the Individual “is a ‘huge’ security risk[;]” 11) a source with Employer 7 told the OPM investigator that the Individual “created an unauthorized ‘chat’ with other coworkers” to teach his coworkers “how to manipulate stats/metrics” so that they appear more efficient, and accordingly, she did not recommend the Individual “for a position of trust[;]” 12) the Individual “admitted [in his LOI] to using ‘free time’ at work every day to study for a...test,” which upset his managers, who discussed this matter with him; 13) the Individual disclosed that he was terminated by the eighth employer listed in his QNSP (Employer 8) after his Family Medical Leave Act (FMLA) request had not been approved, and he stated during the ESI that he took six days of unpaid leave under FMLA because of a family emergency, and further, the Individual was ineligible for FMLA, resulting in his termination “for taking unapproved leave[;]” 14) the Individual provided “false or misleading information” on his QNSP when he failed to state “that he had received a written warning, been officially reprimanded, suspended, or disciplined in the workplace” with regard to his employment with Employers 5, 6, and 7, and when he incorrectly stated his dates of employment with the third and tenth employers listed in the QNSP (Employers 3 and 10). Ex. 2 at 4-8. The foregoing justifies the LSO’s invocation of Guideline E.

### **III. Regulatory Standards**

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

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

In the QNSP, the Individual indicated that he had been terminated by Employer 5 when an “[i]nmate was injured during [his] supervision.” Ex. 4 at 31; Tr. at 19. He reiterated this explanation in the written statement he submitted in response to the allegations in the SSC (written statement), his LOI, and in his testimony. Ex 1 at 6; Ex. 4 at 67; Tr. at 94. Although he disclosed his termination by Employer 5, the Individual did not indicate in his QNSP that he had “received a written warning, been officially reprimanded, suspended or disciplined for misconduct in the workplace[.]” Ex. 4 at 31. Further investigation conducted by OPM investigators revealed that the Individual was not eligible for rehire with Employer 5 and that this employer had conducted an IA investigation and terminated the Individual for “violating Code of Conduct General Order 121.01.” Ex. 4 at 85, 117. According to a source that was interviewed an OPM investigator, the Individual had repeatedly failed “to complete prison movements” and necessary paperwork while in the employ of Employer 5. Ex. 4 at 117; Tr. at 95-96. In his written statement and at the hearing, the Individual denied the assertion that he was reprimanded for violating multiple rules and regulations, stating that “[he] was not requested to or required to complete any counseling for policy violations.” Ex. 1 at 7; Tr. at 19. He testified that he “never received any type of counseling for [failure to complete prisoner movement].” Tr. at 30. During the October 2021 ESI and in his written statement, the Individual stated that he was not aware that his failure to move the inmate, which resulted in the inmate's harm, “was an issue.” Ex. 4 at 67; Ex. 1 at 6. The Individual indicated in his written statement, in the LOI, and during his hearing that he had denied the inmate's repeated requests to change detention cells pursuant to applicable procedure and the information and instruction he had received from colleagues who outranked him. Ex. 1 at 6; Ex. 5 at 2-3; Tr. at 21-25, 177-78. The Individual learned that the inmate had been injured upon hearing “a thud” that sounded as though the inmate “just got hit.” Tr. at 25-26. The Individual stated that the inmate was not harmed and that he was “a little out of it.” Tr. at 26. He testified that he was

subsequently “chewed out” by a difficult supervisor, and that the incident resulted in an internal investigation that indicated the Individual “did not do [his] due diligence[.]” Tr. at 26-28, 95. The Individual testified that although his captain did not want to terminate him, there was some fear “of legal liability at that time.” Tr. at 27, 101-02. In his testimony, he indicated this was the first and only time he had been “in trouble” for his failure to move an inmate.<sup>3</sup> Tr. at 95. At the hearing, the Individual denied having deliberately concealed or falsified information regarding this incident, stated he could not explain why the internal investigation revealed that he had been counseled for his failure to move prisoners, and stated he only recently became privy to the results of the investigation. Tr. at 29, 96-98.

“[A] top level manager” with Employer 5 told the OPM investigator that he had “reservations” about the Individual, and that although the Individual “had good intentions and wanted to be helpful on the job[.]” he “lacked maturity.”<sup>4</sup> Ex. 4 at 82. This supervisor also reported that although he could not “recall the reason for the [Individual’s] termination[.]” he believed “it was related to the lack of trust by coworkers.” Ex. 4 at 83. During that interview, the manager suggested that “honesty may have been a reason for the lack of trust,” and that the Individual had deficient interpersonal skills. Ex. 4 at 83. Regarding this matter, the Individual admitted that there were “personality conflicts” with his colleagues but that it did not interfere with the performance of his duties. Ex. 1 at 7. The Individual testified that the personality conflicts stemmed from the fact that his colleagues wanted him to treat inmates poorly, which presented him with a “moral dilemma.” Tr. at 35.

A former supervisor with Employer 5 told an OPM investigator that the Individual failed to comply with security protocol, for which he was counseled multiple times.<sup>5</sup> Ex. 4 at 84. The former supervisor further stated that on one occasion, the Individual opened a window that he knew should have remained closed to take a delivery, allowing “public access into a restricted area.” Ex. 4 at 84. The source further stated that the Individual “did not always do the required security checks.” Ex. 4 at 84. Regarding the delivery incident, the Individual stated that he “made a mistake[.]” taking the delivery in that manner, and that he simply “forgot about the ...incident[.] as that was the only time [he had been] reprimanded.”<sup>6</sup> Ex. 1 at 7, 10; Tr. at 30, 71, 109-10. Regarding the reprimand, the Individual’s testimony confirmed that he had accepted a delivery through a lobby window from

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<sup>3</sup> After providing his explanation of what transpired while he was employed with Employer 5, the Individual was asked by his counsel whether he “ha[d] a lot of space to provide additional information and documentation on the actual QNSP[.]” Tr. at 28. The Individual stated that he did not, thus necessitating the explanations he provided in the LOI. Tr. at 28-29.

<sup>4</sup> The Individual testified that he feels this particular supervisor had reservations because the supervisor’s recall was likely deficient, and as a result, the statements were unrelated to his character. Tr. at 102-04. He feels the supervisor’s recall was deficient because his former supervisor “has to go by what the higher ups say[.]” as he was tasked with enforcing the decision made at the conclusion of the investigation. Tr. at 103-04, 118.

<sup>5</sup> As part of the exhibits submitted, the Individual provided certificates from Employer 5 that indicate he completed training for such things as defensive tactics and basic training experiences. Ex. C.

<sup>6</sup> The Individual was asked whether he would have reported this incident had he remembered it, and he insisted that he would have. Tr. at 71. He also responded in the affirmative when he was asked whether he had “accurately reported all other information” on the QNSP. Tr. at 71.

a person he and his coworkers would see with some regularity because his coworkers were indisposed, and the delivery person was anxious to leave. Tr. at 30-32. A coworker who “[was not] very fond of [the Individual] just because [he did not] play the same game they did[.]” told the Individual he was going to report the Individual.<sup>7</sup> Tr. at 32-34. The Individual testified that he initially protested, stating that he had previously seen his coworkers open the window for deliveries, but he was subsequently reprimanded by a superior who did not desire to reprimand him. Tr. at 34-39. The Individual also testified that he was not aware that he was not permitted to take deliveries in such a manner. Tr. at 109.

The supervisor with Employer 5 also told the OPM investigator that on another occasion, the Individual took his loaded firearm into a secure area, which was prohibited.<sup>8</sup> Ex. 4 at 84. Per the supervisor, the area was occupied by inmates, and proper protocol requires that the firearm be secured in another location. Ex. 4 at 122. The Individual stated in his written statement and in his testimony that this assertion was false, as employees in his position were not issued firearms, and further, firearms were placed in lockboxes before officers entered secure areas. Ex. 1 at 7; Tr. at 39-42. The Individual testified that this allegation was made with the purpose of “ruin[ing his] job going forward or any other job that [he] could get[.]” Tr. at 43. The former supervisor told the OPM investigator that he did not believe the Individual “demonstrated the ability to handle sensitive, classified[,] or restricted information.” Ex. 4 at 84. He also told the OPM investigator that the Individual’s behavior toward inmates was marked by a “lack of tact[,]” for which the Individual had received counseling, as it would result in the inmates behaving violently. Ex. 4 at 122. And further, the former supervisor stated, the Individual would change squads to avoid receiving punishment. Ex. 4 at 122. The Individual denied ever leaving his squad outside of working overtime hours, because “there [was] no such thing as rotating shifts,” and indicated that he was morally opposed to speaking to inmates in an inappropriate manner. Ex. 1 at 8; Tr. at 43-45, 121-24. In later testimony, the Individual testified that he was initially “direct” and did not “hesitat[e] to say certain things[.]” to the inmates. Tr. at 120. He also stated that he could have been informally counseled on the matter. Tr. at 120-21.

The Individual disclosed his termination from employment with Employer 6 in his QNSP, stating that “[a] comment that was made [was not] liked[,]” but denied that he had received a written warning, official reprimand, suspensive or otherwise disciplined by this employer within the past

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<sup>7</sup> The Individual testified that he believes that sources with Employer 5 made unfavorable statements to the OPM investigator because his “moral compass” prevented him from behaving in the manner his coworkers expected, and accordingly, he was unable to get along with his colleagues. Tr. at 111-15, 117. He indicated that his colleagues knew he was going to be honest instead of blindly supporting them, and accordingly, they have endeavored to “ruin [him] going forward[.]” Tr. at 114-15. A former colleague of the Individual who submitted a letter of support stated in his letter that he understands their former employer, Employer 5, made allegations against the Individual and indicated that he had “never seen [the Individual] commit any actions that would be a threat to safety or security.” Ex. A. He went on to state that he left the employer he shared with the Individual due to the “corruption within the ranks” that he observed. Ex. A.

<sup>8</sup> The Individual indicated that this supervisor’s statement regarding the firearm was inaccurate, and accordingly the rest of his statement could not be trusted. Tr. at 104-06. Further, he believes this supervisor was being directed to make such statements, and later, he testified that this supervisor was likely “thinking of the wrong individual.” Tr. at 106, 111. The Individual testified that the supervisor likely mistook him for someone else, as “his assumptions [were] not correct.” Tr. at 91, 93.

seven years.<sup>9</sup> Ex. 4 at 31-32. In providing further information, the Individual indicated in his LOI and testimony that he had been coached by supervisors for keeping a customer waiting too long. Ex. 5 at 3-4; Tr. at 46-50. The Individual testified the customer had been placed on hold because he could not physically locate her, which was necessary at the time. Tr. at 49-50. He went on to state that because he apologized to management personnel, provided assurances this behavior would not happen again, and ultimately guaranteed that “the customer was pleased,” he felt that the “final warning” he received was “uncalled for.” Ex. 5 at 4; Tr. at 131-32. In his testimony, he indicated that he had not “had any trouble” prior to this incident. Tr. at 51-52. The Individual confirmed in his testimony that he was frustrated by the mistreatment he received, and in an effort to calm himself while exiting the counseling session, the Individual made a statement “under [his] breath[.]” Ex. 5 at 4; Tr. at 52-53, 127-32. He testified that he made just one comment and that it was not threatening. Tr. at 53, 127. This statement was heard by an attendee of the counseling session, and human resources informed the Individual that the attendee felt the Individual’s “statement was offensive, threatening, and inappropriate.” Ex. 4 at 67; Ex. 5 at 5-6; Tr. at 126-27. In his written statement and testimony, the Individual denied threatening anyone, stating “one person reported that they heard me say something, but no one else did.” Ex. 1 at 8; Tr. at 127.

In his QNSP, the Individual disclosed the fact that he had been terminated by Employer 7, and as the QNSP requests a reason for the termination, the Individual simply stated, “[p]olicy infraction.”<sup>10</sup> Ex. 4 at 32; Tr. at 138. He testified that he did not know the policy his former employer alleged he violated “in its entirety[.]” so he does not definitively know whether he violated the policy. Tr. at 139-40. He also stated that “[he] felt [he] was made an example of” in being terminated. Tr. at 54, 151-53. Regarding his termination from employment with Employer 7, the Individual stated in his LOI and testimony that he believes the fact that he was studying for an exam during his personal time at work, when he was “permitted...to be away from [his] desk to do...what [he]...want[ed] to do,” is what set into motion the circumstances for his termination. Ex. 5 at 6; Tr. at 54, 67-68, 144-45. The Individual testified that he never studied at his desk or in the presence of customers. Tr. at 68-69. The Individual had told those who asked that he was studying to secure employment elsewhere, and he stated in his LOI that he believes this angered management, and as a result, he was “treated differently[.]” Ex. 5 at 6, Tr. at 173-74. The Individual stated in his testimony that management attempted to make him feel guilty for studying on his free time. Tr. at 54, 142, 170-71. The Individual testified that he was terminated approximately one week after he was informally confronted by management regarding the matter. Tr. at 171-72.

The Individual also acknowledged in his LOI, during the ESI, and in his testimony that while employed with Employer 7, he had altered the sender’s name that appeared on the inside window of an instant message to reflect his supervisor’s name when he instant messaged her about a matter.

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<sup>9</sup> The Individual stated in testimony that he denied the allegation that he failed to list the written warning, reprimand, etc., from Employers 6 and 7 because when he disclosed his termination, he assumed that he was listing the reprimand, and further, that he provided information regarding the matter during the ESI. Tr. at 72-73. He denied any deliberate omission, concealment, or falsification. Tr. at 73.

<sup>10</sup> The SSC alleges that the Individual reported in his QNSP that he was terminated from employment with Employer 7 “due to a policy infraction.” Ex. 2 at 4. In response to this allegation, the Individual stated in his written statement that “[d]ue to lack of information, I deny this allegation as written.” Ex. 1 at 8; Tr. at 133-36. The Individual clarified in his testimony that he was not denying the fact that he was terminated, but that he had not received any reprimand or counseling prior to his termination. Tr. at 136-37.

Ex. 5 at 68; Ex. 5 at 6-8; Tr. at 55-57, 140. The Individual stated that he was notified this was a violation of the employer's policy and was terminated approximately one week later. Ex. 4 at 68. He indicated that altering the sender's name in an instant message is something that was commonplace among his coworkers, and he meant it as a gesture "to cheer up [his] supervisor." Ex. 1 at 9; Ex. 4 at 68; Ex. 5 at 8; Tr. at 56-57, 139, 145-47. He testified that he initially had a good relationship with his supervisor, but that it changed over time. Tr. at 141. He feels this was due to the aforementioned studying. Tr. at 142-43, 148.

A former supervisor with Employer 7 told the OPM investigator that the Individual "is a huge security risk[.]" and that he was reprimanded on several occasions for various behaviors, including "customer abuse[.]" and "manipulating his stats[.]" Ex. 4 at 114.<sup>11</sup> The former supervisor also indicated that the Individual was "was very combative with authority," that he did "not like women in authority," and that he was disrespectful to the woman who was providing him with employment training. Ex. 4 at 114. The former supervisor also told the OPM investigator that the Individual violated policy when he created a chat with coworkers, "show[ing] other employees how to manipulate stats/metrics that were set in place by the employer." Ex. 4 at 120. By way of example, she indicated that the Individual taught other employees to do things like drop customer calls, so that employees "appear more efficient than they actually were." Ex. 4 at 120. He denied manipulating "stats" in his testimony,<sup>12</sup> and in his written statement and at the hearing, the Individual denied having created a chat, as he did not have the "access" to do so. Ex. 1 at 9; Tr. at 58, 63. He also testified that he was "in an unauthorized chat room" with his training group after the completion of training. Tr. at 63. He stated that the group still had access to the training chat, so they continued to use the chat until they were told to discontinue the behavior. Tr. at 63-64. He testified that he feels that this truth was being embellished a bit in the supervisor's statement to the investigator, and that he did not discuss "stat" or "metric" manipulation in the unauthorized chat group. Tr. at 63-64. He testified that the group would discuss their work-related experiences and ask questions. Tr. at 66. Regarding the assertion that he was combative with the woman who was training him, the Individual testified that the trainer became "irritated" with him after he asked multiple questions with the intention of improving the process. Tr. at 60-62, 155-58. He also testified that he has no issues with women in positions of authority, as he has experience working with women supervisors. Tr. at 153-55.

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<sup>11</sup> In his written statement, the Individual only addressed the allegation that he "manipulat[ed] his stats" indicating that a simple examination of his call stats would prove that he did not engage in such behavior. Ex. 1 at 9. Further, the Individual stated that he was surprised by this former supervisor's statements, but that "at the same time, [he] kind of felt it coming" because he believes this supervisor was instructed to continue perpetuating the falsehoods reported about him, even after she left employment with Employer 7. Tr. at 147-49, 158-60. He stated that he believes his former supervisor had "been advised [that] she needs to keep to the story at all costs." Tr. at 149-51. He indicated that the information provided by a former supervisor in the employ of Employer 7 "were completely falsified[.]" and that the grievances against him stemmed from the fact it was discovered that he was studying for another job. Tr. at 91-93.

<sup>12</sup> By way of illustrating this assertion, the Individual testified that he was "maybe top 10[.]" in terms of his performance, as his moral code would compel him to try and work with customers, preventing him from collecting the full amount owed. Tr. at 58-59. And further, if he was manipulating his "stats," he would have been closer to the top. Tr. at 59-60.



Regarding his termination from employment with Employer 8, the Individual indicated in his QNSP that he was terminated by Employer 8 when his “FMLA [did not] get approved in time.” Ex. 4 at 34-35. The Individual testified that a close family member was ill, so he attempted to secure leave through FMLA. Tr. at 70, 162. The OPM investigator ascertained during the ESI that the Individual made the request to take leave pursuant to FMLA prior to taking the leave, that his leave through FMLA had not been approved, that the Individual was terminated for taking too many unapproved leave days, but that the request for leave through FMLA was subsequently sent to the correct office and approved. Ex. 4 at 68. Despite the subsequent approval, the termination was not reversed. Ex. 4 at 68. The Individual testified that when he attempted to secure FMLA, he was told that he did not qualify, and at the time, he was not informed of “intermittent FMLA.” Tr. at 70, 161. At the time he was told he did not qualify, “there was nothing more [he] could do and the days had already passed.” Tr. at 70, 160-61. The Individual was asked whether he did “what [he] had to do in terms of...taking time off from work regardless of whether...that would create a rule violation[.]” Tr. at 162. The Individual confirmed that he did and that he did not feel his termination was unfair. Tr. at 162-64. However, he disagreed with the ultimate decision not to rehire him when his leave was ultimately approved. Tr. at 163.

Regarding the incorrectly reported dates of employment, the Individual testified that he marked that the dates were estimated, and that “[he] wanted to make sure [he] gave the closest date that [he] could think of.”<sup>13</sup> Tr. at 73-75. He also testified that “[he] did not remember that far back, nor did [he] have any records.” Tr. at 75. Since his termination in 2019 from employment with Employer 5, the Individual has been employed with a number of other employers and denied any “work-related” incident since the termination. Tr. at 166-67. He also stated in his testimony that upon being employed with each employer, he did receive information regarding each one’s policies. Tr. at 168-70.

## V. Analysis

Conditions that could mitigate a security concern under Guideline E include:

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

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<sup>13</sup> In the resume that the Individual submitted, the Individual indicated that he was employed with Employer 3 from August 2020 to October 2020. Ex. F at 1. In the QNSP, he indicated he was employed with Employer 3 from March 2020 to October 2020. Ex. 4 at 27.

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

Adjudicative Guidelines at ¶ 17(a)-(g).

As an initial matter, I do not find credible the Individual's accounts of behavior in his former employment, to the extent they conflict with the accounts that multiple independent sources provided to the OPM investigator. The Individual suggested that two separate employers provided false information regarding his employment history because they had an interest in perpetuating the falsification about his employment years after the Individual left their employment. But the Individual did not submit any evidence to corroborate these assertions.<sup>14</sup> He initially stated that he attempted to secure evidence from his former employers to corroborate the explanations he provided for the alleged acts of misconduct, but he was allegedly informed by those whom he contacted that he was "not allowed access" or was "told to go somewhere else[.]" Tr. at 86. Later in his testimony, when he was addressing the alleged matter of the firearm being taken into a secure location, he responded to DOE Counsel by stating, "with you all's type of clearances...and positions...[I am] sure [you] will be able to get this information...where I could not[.]" Tr. at 88. Regarding the alleged findings of the IA investigation, those which the Individual asserted were false, the Individual indicated that he "ha[d] no route of getting that type of information" that could corroborate his version of events. Tr. at 98. When pressed on the matter, he deferred to his attorney. Tr. at 99-100. The fact remains that while some specific forms of evidence may very well have been inaccessible to the Individual, the Individual was afforded the opportunity to present different kinds of evidence to refute the allegations made in the SSC. The Individual was afforded the opportunity to have witnesses testify, either completely voluntarily or pursuant to a properly issued subpoena, on his behalf regarding these specific allegations. But he did not. Accordingly, I have no evidence before me supporting the Individual's claims that the sources provided false information. However, I do have at least two sources with the same former employer who made specific statements that brought the Individual's character for good judgement and trustworthiness directly into question and statements from another former employer that did the same. As such, I

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<sup>14</sup> While the Individual did submit a letter of support from a coworker who advocated for the Individual's integrity and good judgement and generally indicated he had witnessed "corruption within the ranks" of Employer 5, he also stated that "[he] was not there when this alleged incident took place[.]" Ex. A. It is not clear to which incident the Individual's former coworker was referring, but at no point in the letter did the former coworker provide a version of events that contradicted the specific allegations made by the sources interviewed by OPM investigators.

afford greater weight to the statements of these sources over the self-serving and uncorroborated testimony of the Individual.

At the hearing and in his written statement, the Individual's counsel argued that the mitigating factor at ¶ 17(c) was applicable in this case, as approximately three years had passed since the Individual was last terminated from employment. I am not persuaded. The Individual repeatedly exercised the sort of poor judgement and behavior that resulted in his termination with four different employers over the span of three years. For example, while employed with Employer 5, not only did the Individual open a lobby window to take a delivery in violation of security protocol, but his negligent behavior on another occasion resulted in injury to another person. In fact, the Individual admitted during the hearing that an IA investigation resulted in the finding that he "did not do [his] due diligence[.]" Tr. at 27-28. Accordingly, I cannot conclude that the events were "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." Adjudicative Guidelines at ¶ 17(c).

The Individual's counsel also argued that the mitigating factor at ¶ 17(e) was applicable in this case, as the Individual was "open and honest[.]" and therefore not subject to exploitation, manipulation, or duress. I cannot conclude that the Individual has mitigated the stated concerns pursuant to this mitigating factor. It is the Individual's burden to mitigate the concerns as stated in the SSC. The way the Individual chose to refute the more egregious of the stated allegations was to assert that two of his employers had falsified information regarding his employment, without providing any corroborating evidence, and in spite of the fact that multiple sources had described his behavior as dishonest and lacking in good judgement. Because I cannot conclude that the Individual has been completely forthcoming with information pertinent to his conduct with multiple prior employers, I cannot conclude that the Individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Lastly, I have no evidence before me to indicate that the Individual attempted to disclose or correct any omissions, like the allegation that the Individual took a delivery in a manner inconsistent with security policy while with Employer 5, prior to being confronted with them or that the behavior was the result of acting pursuant to the advice of counsel or a person who professionally advises people in such matters. I do not have any proof, beyond the Individual's general assertions, that the information came from an unsubstantiated source or one of questionable reliability, and I have no evidence that the behavior was the result of associating with individuals involved in criminal activity. Accordingly, the mitigating factors at ¶ 17(a), (b), (f) and (g) are not applicable in this case.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. 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, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh  
Administrative Judge  
Office of Hearings and Appeals