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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-22-0127
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Issued: November 22, 2022

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and 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 be denied.

I. Background

The Individual is an applicant for employment with a DOE contractor, for a position that would require him to hold a security clearance. In connection with the Individual’s request for access authorization, the DOE reviewed the Individual’s responses to a Letter of Interrogatory (LOI),² a Questionnaire for National Security Positions (QNSP), the results of a Single Scope Background Investigation (SSBI) completed by the U.S. Office of Personnel Management (OPM), and the results of a background investigation conducted by the Defense Counterintelligence and Security Agency (DCSA). Ex 9 at 1. Due to unresolved security concerns, the Local Security Office (LSO) informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 3. The Notification Letter also informed the Individual that he was subject to the Bond Amendment, which may disqualify him from holding a security clearance. *Id.* at 1. In the Summary of Security Concerns that accompanied the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.* at 4-8.

¹ 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.

² The Local Security Office sent the Individual an LOI in November 2021 (Exhibit (Ex.) 9), to which he responded in December 2021 (Ex. 9) and January 2022 (Ex. 7).

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted ten numbered exhibits (Ex. 1-10) into the record. The Individual introduced 18 lettered exhibits (Ex. A-R) into the record and testified on his own behalf. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the Summary of Security Concerns, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The Summary of Security Concerns specifically cites Guideline E and Guideline J of the Adjudicative Guidelines. Ex. 3.

Guideline J addresses criminal activity, which can create doubts about a person’s judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. Furthermore, it calls into question a person’s ability or willingness to comply with laws, rules, or regulations. *Id.* In citing Guideline J, the LSO relied upon the Individual’s conviction, by military court martial, of three charges, and his sentencing to three years imprisonment, total forfeiture of all pay and allowances, and a general court martial dismissal. Ex. 3 at 5.

The LSO also cited the Bond Amendment to support its determination that the Individual is not eligible for access authorization. Ex. 5. The Bond Amendment states, in pertinent part, that, absent a waiver, an agency may not grant or renew a security clearance for an individual who “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year.” 50 U.S.C. § 3343(c)(1)(A). In citing the Bond Amendment, the LSO relied upon the Individual’s incarceration in federal prison for two years. Ex. 5 at 1.

Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct “can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* Conditions that could raise a security concern under Guideline E include the “deliberate omission, concealment, or falsification of relevant facts” from any personnel security questionnaire or similar form used to conduct investigations or determine employment qualifications and “deliberately providing false or misleading information” to a DOE employer or investigator. *Id.* at ¶ 16(a)-(b). In addition, any “credible adverse information” received by the DOE which, “when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information” may raise a security concern under Guideline E. *Id.* at ¶ 16(c).

Regarding Guideline E, the LSO asserted that the Individual showed “a pattern of unwillingness to comply with rules and regulations” and provided misleading information during an investigation. Ex. 3 at 1-4. The LSO relied upon the following conduct:

1. The Individual was found guilty, via military court martial, of three charges and sentenced to three years imprisonment;
2. The Individual has used multiple names and Social Security Numbers (SSN) “concurrently without legal name changes” and provided conflicting information, during the investigative process, about the dates during which he used each name and SSN;
3. The Individual was married to two women at the same time and provided conflicting information about the circumstances of both marriages;
4. The Individual provided false and misleading information on his application for employment with a DOE contractor;
5. The Individual provided false information regarding the circumstances of his separation from the U.S. military; and
6. The Individual was the subject of a review for illegal banking transactions by the military branch of the Office of Special Investigations (OSI).

Id. Considering the conduct listed above, I find the LSO's security concerns under Guidelines E and J are justified.

IV. Findings of Fact

A. Names and Social Security Numbers

In his December 2021 response to the LOI, the Individual reported that, "to the best of [his] knowledge," he was born in either 1958 or 1963,³ was given a name (a "birth name"), and was assigned a SSN (his "original SSN"). Ex. 8 at 3. In his June 2010 QNSP, the Individual reported that he identified himself by his birth name until 2010. Ex. 6 at 126. However, during an August 2010 interview with an OPM investigator, the Individual reported that in 1967, he stopped using his birth name and began identifying himself using a different name (a "second name"). *Id.* at 313; Ex. 8 at 4. In his May 2021 QNSP, the Individual reported to OPM that he identified himself using this second name from 1969 to 1987. Ex. 6 at 17. But, in the June 2010 QNSP, the Individual reported that he used this second name from 1997 until 2010. *Id.* at 126.

According to his December 2021 LOI response, in 1981, the Individual applied with the Social Security Administration ("SSA") to change the name shown on his social security card from his birth name to his second name. Ex. 8 at 3. The Individual also reported that when the SSA changed his social security account to show the second name, they issued him a new SSN to avoid confusion with his brother's SSN, which had a consecutive number. *Id.* at 3. The Individual reported that the SSA instructed him to stop using his old SSN and to use his new SSN "exclusively[,] once [his] employer received it." Ex. 8 at 3; Ex. 6 at 16.

In the December 2021 LOI response, the Individual also reported he was known by both his birth name and his second name, from 1969 to 1985, but he could not recall "what each name was used for." Ex. 8 at 4. However, in his 2010 QNSP, the Individual reported that he used his birth name continuously from 1958 to 2010. Ex. 6 at 126. He also reported that, from 1975 to 1985, he identified himself using another name (a "third name"). *Id.* at 17. He indicated that he used this name as a "business name." *Id.* at 16-17.⁴

In his June 2010 QNSP, the Individual disclosed he also identified himself using another name (a "fourth name"). Ex. 6 at 125. During an August 2010 interview, the Individual reported to OPM that he identified himself using this name from 2002 to 2010. *Id.* at 313. However, the Individual also reported to OPM that he identified himself using the fourth name from January 1997 to May 2021. *Id.* at 17, 90.

³ The year of the Individual's birth is not known. In his 2021 response to the LOI, the Individual stated he was "informed" he was born in 1958, but his "original birth certificate" indicates he was born in 1963. Ex. 8 at 2-3.

⁴ It is not clear from the QNSP if the Individual identified himself using the third name to conduct business operations, or if the third name was the name of his business. Ex. 6 at 16-17.

Also, in his June 2010 QNSP, the Individual reported that, in December 1999, he applied to join the U.S. military. Ex. 6 at 17. The Individual claimed that, during the application process, he did not have the social security card reflecting his second name and new SSN. *Id.* at 17; Ex. 8 at 3. As such, he provided documents to the military identifying himself using his birth name and his original SSN. Ex. 6 at 17, 214. The Individual claimed that once the military “was provided” with his new SSN, in 1999, he began using his second name for a year until his “wife wanted [him] to change back to [his] birth name.” Ex. 8 at 4. As a result, some of the Individual’s military records show his “old information” and some of his military records show his “new information.” Ex. 6 at 214.

In his May 2021 QNSP, the Individual reported that, in January 2020, he changed the name on his social security account, again, to reflect his birth name. Ex. 6 at 17; Ex. 7 at 4. However, the Individual claimed that the SSA would not assign his birth name to his new SSN, so he was “forced” to use his original SSN. Ex. 6 at 16. In the two QNSPs, the Individual reported that he used his birth name “for Social Security purposes,” signed all other “official documents” using his second name, signed his banking documents using his birth name, and used his other names for “other personal and business matters.” *Id.* at 17, 313.

B. The Individual’s Marriages

In the May 2021 QNSP, the Individual reported that he married his first wife in June 1985. Ex. 6 at 38. However, in his 2021 LOI response, he indicated that, when his relationship with his first wife “deteriorated,” he discovered that the state where his marriage occurred did not have a marriage certificate on file and the marriage officiant may not have filed the necessary documents. Ex. 8 at 5. Based on this information, the Individual alleged that he did not believe his marriage to his first wife was valid. *Id.*

Also in his May 2021 QNSP response, the Individual reported he married his second wife in January 1998. Ex. 6 at 39. In his January 2022 LOI response, the Individual reported he met his second wife in 1997, through a pen pal listing he saw at his church. Ex. 7 at 3. The Individual claimed that, when he met his second wife, she lived in a foreign county and wanted to get married, but he was not willing to get married until they knew each other better. *Id.* In January 1998, without having obtained a divorce from his first wife, the Individual married his second wife, in a “mock” marriage ceremony⁵ in the foreign country. Ex. 7 at 3; Ex. 6 at 39. The Individual reported that a “mock” ceremony was necessary for the second wife’s family, because “it was unlikely [the couple] would return to [the second wife’s country] soon if [they] contracted a legal marriage in the United States.” Ex. 7 at 3; Ex. 6 at 39. The Individual claimed that having a religious marriage ceremony with his second wife required a week of marriage classes, so he altered the name shown on a photocopy of his birth certificate to match the name shown on his “other documents” and used the altered birth certificate to obtain marriage counseling with his second wife. Ex. 7 at 3.

⁵ The Individual had a marriage ceremony for the second wife’s family, but did not consider it an “official” marriage. Tr. at 27.

In his December 2021 response to the LOI, the Individual claimed that after the “mock” ceremony, his second wife sent him a marriage certificate indicating that they were legally married. Ex. 8 at 5. During his background investigation, the Individual claimed that the marriage to his second wife was a “forced marriage” because he did not consent to it. Ex. 6 at 39. However, during an interview with OPM, the Individual stated that in April 2002, he added his second wife’s surname to his name to honor her family. *Id.* at 313. In his May 2021 QNSP, the Individual reported that in January 2007, he divorced his first wife and “remarried” his second wife. Ex. 8 at 5; Ex. 6 at 38, 311, 316.

C. The Individual’s Court Martial

In March 2000, a military branch of an office of special investigations (“Office of Special Investigations”) referred the Individual to a military court martial on multiple charges. Ex. 6 at 321. The military charged the Individual with bigamy and with the possession and filing of false documents because he “filed false documents claiming to be married to [his first wife] for the 12-year period that he had been on active duty.” *Id.* at 321-322. Additionally, the military found that the Individual provided false documents upon enlistment, identifying himself using one name, while at the same time providing documents identifying himself using a different name. *Id.* at 322. The military also charged the Individual with false identity; wrongfully, fraudulently, and covertly maintaining a second identity; unreported foreign travel; engaging in various illegal acts; and false official statements. *Id.* at 83, 100.

During an August 2010 interview with an OPM investigator, the Individual disclosed that, in May 2000, he pled guilty to all charges and was sentenced to three years in federal prison, forfeiture of all pay and allowances, and dismissal from the military, effective September 2003. Ex. 6 at 322. The Individual served two years of his prison term. *Id.* at 322.

Throughout the investigative process, the Individual claimed his court martial was invalid. In his 2021 QNSP, the Individual stated the military relied upon the identification documents he provided, reflecting his birth name and social security number, in obtaining his induction. Ex. 6 at 32-33. The Individual argued that because the court martial found the documents to be illegal, his induction into the military was obtained illegally and by fraud. *Id.* at 32-33. The Individual also claimed that the court martial was “improperly constituted” because it was presided over by female members who were using common law names and other “fictitious identifies.” *Id.* at 33, 177. The Individual also asserted that because his court martial was invalid, the military’s documentation of his discharge is invalid. Ex. 6 at 32. The Individual claimed the DD-214⁶ that was issued to him “contains numerous errors[,] including [a] false name, [a] false Social Security number...false dates, and other errors,” and is, therefore “illegal under military law.” *Id.* The Individual also alleged that a military court of criminal appeals held that his charges should be

⁶ The DD-214, Certificate of Release or Discharge from Active Duty, is issued when a service member performs active duty and is used to verify their military service. The DD-214 typically describes one’s character of service and the reason for their separation from the military. National Archives, National Personnel Records Center, <https://www.archives.gov/veterans/military-service-records/about-service-records-0> (last visited Oct. 18, 2022).

dismissed, but the military refused to comply with the court's order. *Id.* at 33, 63-64. The Individual asserted that he has a petition pending with the military to provide him with a "valid" DD-214; one without false information. *Id.* at 32-33. The Individual also claimed that he filed a Petition for a writ of Habeas Corpus with the military. *Id.* at 33. The Individual asserted that, due to these issues, his discharge from the military was "uncharacterized," rather than dishonorable, and as such, he is still a member of the armed forces. *Id.* at 32-33.

D. The Individual's Investigation for Illegal Banking Transactions

In October 1999, the Office of Special Investigations examined the Individual for illegal banking transactions, involving a transfer of money from a bank in a foreign county.⁷ Ex. 3 at 4. During an August 2010 interview with an OPM investigator, the Individual reported that he had intended to separate from the military and start his own business. Ex. 6 at 322. According to the OPM investigation, the Individual financed this business with \$90,000 that he transferred from his children's college fund and \$1,000,000 that was transferred from his second wife's family, who resided in a foreign county, to a bank account in the U.S. *Id.* However, in his 2021 LOI, the Individual stated some of the money was "funneled through" his first wife's father, not his second wife, and "the rest was from at least two of her siblings." Ex. 8 at 5. The Office of Special Investigations contacted the U.S. Drug Enforcement Agency (DEA) to investigate the Individual due to a concern related to a possible connection to drug trafficking. Ex. 3 at 4. During the DEA's investigation, it was discovered the Individual had two identifies and two social security numbers. Ex. 6 at 322.

E. The Individual's Application for Employment with a DOE Contractor

On his application for employment with a DOE contractor, the Individual made several representations that were discrepant with other information he provided during the investigative process. Ex. 3 at 3. First, the Individual reported he was unemployed from February 2002 to January 2005, because he was prohibited from using his social security account; however, in his June 20210 QNSP, the Individual reported that he was employed full time, from September 2003 to February 2005. Ex. 10 at 5; Ex. 6 at 233. Second, the Individual described the disposition of his court martial as "unknown." Ex. 10 at 5. But, during an interview with an OPM investigator, the Individual disclosed he pled guilty and was sentenced to three years in federal prison. Ex. 6 at 322.

V. Hearing Testimony

A. Names and Social Security Numbers

During the hearing, the Individual testified that he "suspect[ed]" that he started identifying himself using more than one name when he initially received his driver's license. Tr. at 18. He stated that in 1981, he identified himself using the second name, but his social security card showed his birth

⁷ Although the LSO cited this investigation as a security concern, I do not know what prompted the Office of Special Investigations to review the Individual's banking transactions or what the results of the investigation were.

name. *Id.* at 111. He stated that in 1981, he changed his name with the SSA from his birth name to his second name and was issued a new social security card. *Id.* at 111. The Individual stated that the discrepancies in the documentation he submitted to DOE is the result of his poor recollection of all the dates and uses of his multiple names. *Id.* at 110.

The Individual testified that when he applied to join the military, he did not have his social security card with him as his social security card was at his parents' home and "it was several years before [he] went back and got the new Social Security card." *Id.* at 20, 65, 114-115. He stated he could have gone back to the SSA to get a replacement card, but "I wasn't thinking about that. They didn't tell me to go do that. So[,] I just went with what we were doing." *Id.* at 115.

The Individual indicated that "they" told him that he "had to use the information that was available, which was the old Social Security information and that [he] could change later once [he] had the new information."⁸ *Id.* at 20. He stated that he "initially" applied using his birth name, and once he provided the military with his new social security information, he was known by the second name. *Id.* at 20-21. The Individual testified that he provided both his birth name and second name on his application to join the military. *Id.* at 19-20, 63. He stated he was using his birth name for a while, but claimed that his security manager told him to "conceal [his] identity as an intelligence officer" with the military during his contact with a foreign national, so he started using his second name. *Id.* at 21.

The Individual noted he used the third name as "a business name" that identified the name of his business, not himself personally.⁹ *Id.* at 118-119, 148-149. The Individual did not provide a date range for his use of this name, but he stated that he used the name "going way back." *Id.* at 120.

The Individual acknowledged that he has accounts associated with different names and social security numbers, and he was still using different names for different purposes. *Id.* at 90. The Individual stated that as of January 2020, he identified himself using his birth name and changed his social security account to show this name.¹⁰ *Id.* at 116-117. The Individual stated that he has bank accounts associated with his birth name and second name, the deed to his house is in his second name, and he intends on changing his passport to "have both names on there just so I have some kind of identification if the need ever comes up." *Id.* at 91, 97, 99. He stated he does not use the second name "for anything that has tax implications." *Id.* at 98.

The Individual added that he does not understand the security concerns related to his multiple names "because I've always been honest about the fact that I had them. No one has ever showed me that I shouldn't be using them." *Id.* at 129. The Individual testified that he never tried to hide

⁸ The Individual did not indicate who, specifically, directed him to apply to the military using his old social security number and birth name.

⁹ It should be noted that this name contains a first and last name and does not contain any business identifiers.

¹⁰ The Individual testified that he also has a social security card showing his fourth name, but he "never really used it for anything." *Tr.* at 117-118.

the fact that he used both names and did not gain any advantages by using both names. *Id.* at 21. He stated that his use of the second name was “how I wanted to identify myself.” *Id.* at 38.

The Individual testified that, when he received the Summary of Security Concerns outlining the LSO’s security concerns with his use of multiple names and SSNs, he did not “do anything special” or take any action to address the issue. *Id.* at 128-129. He stated, “...it seems like I might have had half a dozen things to change, and now, there’s just so much to change. All the hundreds of accounts you have on the Internet and everything. So I’ve almost given up on trying to change everything.” *Id.* at 90-91. When asked if he intended to continue using multiple names and social security numbers, the Individual stated, “Like I said, I’ve almost given up. It’s not that I don’t want to. It’s just seems like it’s more trouble than it’s worth.” *Id.* at 91. When asked if he could commit to using one name, if “it [was] something that the government asked of [him],” the Individual stated he would “put more effort into it,” but he is “not aware of any reason why it would be legally required.” *Id.* at 99.

B. Marriages

Turning to his marriages, the Individual testified that he married his first wife in 1985, and then, in 1996, he discovered that “the portion of the document that needs to be sent in to get recorded had not been sent in.” *Id.* at 23, 81-82, 107. He stated that he contacted his state office of vital statistics, and he was told “there was no valid marriage.” *Id.* at 23. As such, he stated, in 1997 he started communicating with his second wife. *Id.* at 23-24, 82. The Individual explained that she was anxious to be married, and when he sent her a “friendship ring,” she called it an “engagement ring.” He explained how he married this woman in a “mock ceremony,” stating, “I wasn’t going to marry her the first time I met her. So I told her we could do a mock ceremony and I could get a visa for her to come to the US so we could get to know each other...” *Id.* at 25, 27, 101. He stated the “mock ceremony” was intended for the second wife’s “family to, you know, to celebrate even though it wasn’t supposed to be official.” *Id.* at 102. The Individual stated that he was required to get marriage counseling at a church before the marriage ceremony, so he altered the name on his birth certificate to match the name that appeared on his passport, photocopied it, and presented it to the church. *Id.* at 127.

The Individual explained that, when he returned to the United States, he did not believe he was married to the second wife, but she sent him what appeared to be “a church and a civil marriage certificate.” *Id.* at 28. The Individual stated he did not think the marriage was valid because he did not consent to it. *Id.* at 29. He believed that this marriage was “forced” and felt that it was possible that the second wife bribed someone to obtain a marriage certificate. *Id.* at 104. He stated “[w]hether it was fraudulent, I honestly don’t know. I don’t know what her intent was. I don’t know if there was extra, like, bribe money spent... [as] corruption is quite prevalent” in the country in which they were married. *Id.* The Individual stated that he took the marriage certificate to an

attorney on his military base, who advised him to consider the document valid, and, in 2007, he divorced his first wife and married his second wife, again, in 2007.¹¹ *Id.* at 101, 108, 29.

C. Banking Transactions

The Individual acknowledged that the court-martial proceedings originated from an investigation related to “unusual financial transactions” reported by his bank. *Id.* at 73, 128. He testified that he had wanted to purchase a business, and as such, he accepted money from his first wife’s family. *Id.* at 31. He stated that he never took money from his second wife’s family because they did not have money to lend him. *Id.* at 32. Regarding the amount of money transferred, the Individual stated, “They claim that it was large. It was \$200,000 and they inflated it.” *Id.* at 73. He asserted that of the \$200,000, \$90,000 came from his children’s college fund, and the remaining \$110,00 came from his first wife’s family. *Id.* at 73-74. The Individual explained that the Office of Special Investigations investigated him for drug trafficking as his second wife was from a foreign country, but believed they ended the investigation because “the money transfers all appeared to be legitimate, so they just moved on....” *Id.* at 35-36, 77.

D. Court Marital

The Individual acknowledged that, in 2000, the military began court-martial proceedings against him. *Id.* at 28, 32-33. He stated that he does not believe that he received fair representation during his court-martial proceeding because he was using a prescribed medication that causes confusion, and he “could not think very well” through the proceeding. *Id.* at 33. The Individual felt that his defense attorney was working against him by refusing to introduce the fact that “the first marriage was not filed according to law” and that his second marriage occurred without his consent. *Id.* at 33-34, 70-71. He also stated that the panel that presided over this court-martial proceeding was not properly constituted because a female member of the panel was using a common law name, and the military “refused to take any action on it.”¹² *Id.* at 69.

Regarding his conviction for using false official documents and providing false statements to the military, the Individual stated the military uses “a much different standard than civilian law does, and [the military] didn’t have to prove fraud.” *Id.* at 37. Regarding the allegation that he concealed his identity, the Individual stated, “if you look at my application to the [military], and my first security clearance application, and the one I did to go into the reserves, it all shows that information. So, they, basically, just hid that information from the court-martial so they could convict me.” *Id.* at 37.

¹¹ When asked how he divorced someone he was never married to, the Individual stated he did not have to demonstrate that he was legally married during his divorce proceedings. Tr. at 108-109.

¹² The Individual alleged that the military discriminated against him by failing to similarly investigate women who change their last names and identify themselves using the surname of their husband after marriage. Tr. at 69-70, 89-90.

The Individual also testified that a military court of criminal appeals found that he should have been released but the military refused to comply with the decision, and nothing has happened.¹³ *Id.* at 51-52, 55. He also stated that he filed a Petition for a writ of Habeas Corpus with the military to dismiss the charges for which he was court-martialed and provide a corrected DD-214. *Id.* at 56. He stated none of his petitions to the military have been successful because “there is a bias toward maintaining what they’ve already done.” *Id.* at 57, 63.

The Individual testified that he does not believe the Bond Amendment applies to him because a military court of criminal appeals ruled his charges should have been dismissed. *Id.* at 66. He asserted that, should the Bond Amendment apply to him, it should be waived because his case is meritorious. *Id.* at 68. He stated the military “had [him] drugged” during his court martial, withheld certain documents during the court martial, and did not mention his prior security clearances. *Id.* at 68-69.

E. Employment Application

The Individual stated that he listed the disposition of his court-martial as “unknown” on his employment application because “according to the [military] Court, the charges should have been dismissed, which to [him] indicates that the court-martial was erased. If the charges are dismissed, how could [he] be convicted on them?” *Id.* at 71-72. When asked to consider “how it might be considered misleading that your employment application did not note that you were convicted and served time,” the Individual responded, “I don’t recall that I put that down there, but it’s certainly not misleading to state that this whole thing is beyond my comprehension.” *Id.* at 72. When questioned, a second time, about his failure to disclose his incarceration on his employment application, the Individual stated, “I don’t recall if they had a space for it or anything.” *Id.* at 121.

The Individual stated that after he was released from prison in 2002, the military directed him not to use either of his social security numbers, and he was homeless until September 2003. *Id.* at 52, 60, 71. The Individual stated that his business failed because of his court-martial and incarceration. *Id.* at 83. When asked to explain why, on his 2010 QNSP, he indicated he was fully employed in that business from September 2003 to February 2005, he stated, “Well, I didn’t make any money, but I was employed. It was still mine.” *Id.* at 83-84. The Individual stated that, once he was “emotionally able” to use his personal information again, from 2008 to about 2010, he started working as a machinist and worked in the safety field. *Id.* at 39.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have

¹³ The Individual did not produce a copy of a decision from a military court of appeals related to his court-martial. Tr. at 55-56, 67-68.

determined that the Individual has not sufficiently mitigated the security concerns cited by the LSO under Guidelines E or J of the Adjudicative Guidelines. I have also determined the LSO determined properly that the Individual is disqualified from holding a security clearance under the applicable provisions of the Bond Amendment. Therefore, I find that the Individual's access authorization should be denied. The specific findings that I make in support of this decision are discussed below.

A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

- (a) making “prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”;
- (b) demonstrating their 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”;¹⁴
- (c) showing that the offense was “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) acknowledging “the behavior and obtain[ing] counseling to change the behavior or tak[ing] 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”; and
- (e) taking “positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

Adjudicative Guidelines at ¶ 17.

¹⁴ This case does not involve an allegation that the conduct at issue was at the direction of, or due to being advised by, an attorney or some other professional concerning security processes. Therefore, this factor is not applicable and will not be discussed in this decision.

Although the Individual's use of multiple names and social security numbers appears to have begun in his childhood, the behavior has continued for decades and into the present day. The Individual testified that, as of the date of the hearing, he continues to use different names for banking purposes, tax purposes, travel, and his home. The Individual is unable to provide a reliable, consistent explanation detailing when or why each name or social security number was used and for what purpose, and it appears that he used, and continues to use, his various names, or social security numbers, based upon nothing more than convenience, desire, or perhaps, confusion.

Although the record is unclear about whether the Individual actively attempted to conceal his use of multiple names or social security numbers, the Individual has not taken substantial steps to resolve the problem and live with one name and social security number. Furthermore, he blames the military for much of the confusion that has arisen from him providing invalid identifying information upon his induction, going as far as accusing the military of committing fraud upon his enlistment based upon the documentation that he provided. Finally, the Individual fails to recognize how his use of multiple names and social security numbers throughout the years, and his inability to remember when they were used, leaves him vulnerable to exploitation, including identity theft, and gives rise to questions regarding his trustworthiness and judgment. Thus, I cannot find that the Individual has mitigated the security concerns associated with his concurrent use of multiple names and social security numbers, and his inability to specify the dates and circumstances where he used each one.

Turning to the concerns related to the Individual's marriages, I do not find the Individual's explanations for being married to two people at the same time to be credible. First, the Individual claimed he believed his first marriage was invalid, yet he could not persuasively explain why he later pursued and obtained a divorce from this woman, to whom he never believed he was legally married. Second, he engaged in a "mock" marriage ceremony with another woman, and when he learned that the marriage turned out to be legally binding, he accused the woman of engaging in bribery or fraud, committing a "forced" marriage. Nonetheless, he later went on to marry that same woman, voluntarily. Furthermore, despite alleging he was "forced" into his second marriage, the Individual changed his name to adopt the second wife's surname, to honor her family. In light of the Individual's inconsistent testimony regarding his two marriages, and his unwillingness to accept responsibility for the situation, I cannot find that he has mitigated the associated security concerns and that this conduct does not cast doubt on the Individual's reliability, trustworthiness, or good judgment.

Regarding his court martial, the Individual similarly blamed the circumstances of the conviction on others: his attorney was working against him and did not present all the information; the panel that presided over the trial was improperly constituted; he was drugged during the trial; and the military hid information. In the absence of any evidence to support these allegations, and in light of my general concerns with the Individual's credibility, I do not afford any weight to these claims. Although the Individual claims that a military court of criminal appeals found in his favor regarding the conviction and asserts that the military refuses to abide by that ruling, the Individual has not provided a copy of any such decision to be included in the record. Again, the Individual's

unwillingness to accept responsibility for the circumstances leading to his conviction leads me to question the Individual's judgment, reliability, and trustworthiness, and I am unable to find that he has mitigated the associated security concerns.

Addressing the remaining Guideline E concerns, that the Individual was under review for illegal banking transactions and provided false and misleading information on an employment application, I am, again, unable to find mitigation in light of the Individual's contradictory and confusing statements. The Individual provided contradictory statements to investigators regarding where the money for his business originated, making it difficult to discern which of his statements are truthful. Similarly, regarding the employment application, the Individual seems only to have provided portions of the truth, failing to list the details of the circumstances surrounding his court martial or his unemployment. None of the information the Individual presented at the hearing resolved these issues. As such, I cannot find that the Individual has mitigated the security concerns associated with this conduct.

For the foregoing reasons, I cannot find that the Individual has mitigated the security concerns arising under Guideline E.

B. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) there is no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation, including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

The Individual's conviction and incarceration occurred over 20 years ago. However, some of conduct for which he was charged and convicted in the court martial—false identity; wrongfully, fraudulently, covertly maintaining a second identity; false official statements; and possession and use of false identification documents—appear to continue through the present. The Individual continues to use multiple identities, provided incomplete answers on his employment application, and has provided contradictory statements throughout the processing of his application for access

authorization. Although this recent conduct may not rise to the level of criminal conduct, it demonstrates that the Individual's conviction and subsequent incarceration did not occur under unusual circumstances and continues to cast doubt on the Individual's judgment, reliability, and trustworthiness. As such, I cannot find that criminal activity is unlikely to recur or that there has been evidence of rehabilitation. Furthermore, although the Individual casts blame upon the military and others for his conviction, there is no evidence in the record to support that the Individual did not commit the offenses for which he was convicted or that he was coerced into committing them. Therefore, I find that the Individual has not mitigated the security concerns associated with Guideline J.

C. Bond Amendment

The Bond Amendment states, in pertinent part, that an agency may not grant or renew a security clearance for an individual who "has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year." 50 U.S.C. § 3343(c)(1)(A); *see also* Memorandum from David Turk, Deputy Secretary of Energy, to Kathleen Hogan, Acting Under Secretary for Science and Energy, et al., "Revision of DOE Policy Regarding Application of the Bond Amendment" (April 23, 2021). However, an individual may request a waiver from such disqualification "if there are mitigating factors." 50 U.S.C. § 3343(c)(2). "Any such waiver may be authorized only in accordance with (A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or (B) the adjudicative guidelines." *Id.*

The Individual asserts the Bond Amendment does not apply to him because a military court held that his criminal charges should have been dismissed. Tr. at 66. The Individual was convicted of multiple crimes via military court martial and served two years in federal prison. The Individual's claim that his conviction is invalid is not persuasive, as I concluded in my analysis under the Adjudicative Guidelines above. Pursuant to DOE guidance on the Bond Amendment, after considering the appropriate mitigating factors found in the Adjudicative Guidelines, I find that because the Individual has not mitigated the security concerns associated with Guidelines E and J, a meritorious waiver from the disqualification provisions of the Bond Amendment would not be appropriate. Therefore, the Individual is disqualified from holding a security clearance.

VII. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guidelines E and J. Accordingly, I have determined that the Individual should not be granted access authorization. Further, the Individual was appropriately found disqualified from holding a security clearance under the applicable the provisions of the

Bond Amendment. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals