



lettered exhibits (Exs. A-I) 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 SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SCC specifically cites Guideline E of the Adjudicative Guidelines. Ex. 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.*

Regarding Guideline E, the LSO listed the following conduct:

1. In his August 2021 QNSP, the Individual stated that his access authorization was suspended as the result of a September 2011 written reprimand related to job

performance.<sup>2</sup> However, information in the possession of DOE indicated that the Individual was reprimanded, and his access authorization was suspended due to security concerns related to his finances and misuse of a corporate credit card.

2. During a September 2021 ESI, the Individual clarified that his access authorization was previously suspended due to financial issues. However, information in the possession of DOE indicated that the suspension was additionally based upon misuse of a corporate credit card, and the Individual failed to share that information.
3. During an October 2021 TESI, the Individual admitted that his access authorization was suspended when he used his company credit card for personal use.
4. The Individual stated in his August 2021 QNSP that he had never been diagnosed with Bipolar Mood Disorder (BPD). However, information in the possession of DOE indicated that the Individual was diagnosed with BPD in approximately September 2010 and again in February 2011.
5. The Individual stated in his August 2021 QNSP that, in the last seven years, he had not failed to file or pay taxes. However, in a March 2022 LOI, he admitted that he owed the IRS over \$100,000 in past due tax debt.
6. In his August 2021 QNSP, the Individual stated that, in the last seven years, he had not had any accounts charged off due to failure to pay as agreed. However, information in the possession of DOE indicated that the Individual has an account that was assigned as charged off in July 2018.
7. The Individual stated in his August 2021 QNSP that he had not had any bills turned over to a collection agency or been over 120 days delinquent on any debt in the last seven years, with the exception of one medical bill. However, information in possession of DOE indicated that the Individual had at least six accounts that were over 120 days past due.

Ex. 1.<sup>3</sup>

#### **IV. Findings of Fact**

In completing his 2021 QNSP, the Individual stated that:

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<sup>2</sup> It should be noted that, although the Individual previously held a security clearance in the course of his career, the Individual retired from that position shortly after his security clearance was suspended. Tr. at 25. As such, he is presently an applicant for a security clearance.

<sup>3</sup> Although there was an additional allegation raised in the SCC asserting an inconsistency in the Individual's statements regarding a payment plan with the IRS, during the hearing, DOE counsel noted that this allegation appears to have stemmed from confusion on the part of the investigator and was no longer an issue. Tr. at 45-47.

1. He had never “been diagnosed by a physician or other health professional (for example, a psychiatrist, psychologist, licensed clinical social worker, or nurse practitioner) with psychotic disorder, schizophrenia, schizoaffective disorder, delusional disorder, bipolar mood disorder, or antisocial personality disorder.”
2. His clearance was suspended in approximately September 2011 because he “was given a written reprimand for [j]ob performance.”
3. In the last seven years, he had not “failed to file or pay Federal, state, or other taxes when required by law or ordinance.”
4. He had not had any accounts “charged off . . . for failing to pay as assigned.”
5. Over the past seven years, he had only had one debt that was over 120 days delinquent.

Ex. 16 at 32, 37-40.

In September and October of 2021, the Individual completed interviews with Defense Counterintelligence and Security Agency (DCSA) investigators. Ex. 1 at 1-2. During the September interview, the Individual told the investigator that, in 2011, “his security clearance was not suspended due to employment issues, per se, and as listed on his QNSP, but rather due to financial issues.” *Id.* at 1. At the second interview in October of 2021, the Individual admitted to the investigator that his clearance had been suspended after he used his company credit card for personal use. *Id.* The Individual also acknowledged that he had used the company credit card for personal purchases on multiple occasions when he did not have his own money to make purchases.<sup>4</sup> *Id.* at 2.

In his March 2022 LOI, the Individual explained that he had not disclosed his BPD diagnosis in his QNSP because his counselor and personal physicians stated that he did “not exhibit signs of being Bipolar,” and the diagnosis was “most likely a mistake.” Ex. 12 at 16. The Individual said his exclusion of the diagnosis on the QNSP “was not deliberate.” *Id.* Regarding the 2011 suspension of his security clearance, the Individual indicated that he had stated that his clearance was suspended due to a job performance issue rather than financial concerns and misuse of a corporate credit card because he “assumed the misuse of a corporate credit card was also a job performance issue.” *Id.* He alleged that he did not deliberately exclude that information from his QNSP. *Id.*

The Individual additionally stated in his March 2022 LOI that he and his wife “owe[d] approximately 100K [in Federal taxes] and ha[d] a payment plan for \$1800 per month.” Ex. 12 at 14. In addressing the charged off accounts, the Individual stated that he “forgot” about two

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<sup>4</sup> Although the transcripts of the September and October 2021 interviews are not in the record, the Individual did not dispute the allegations contained in the SSC during the hearing. Tr. at 33, 74.

accounts that had been charged off and “it was not deliberate” that he did not include them on his QNSP. *Id.* at 15. As to the six accounts that DOE alleged were more than 120 days past due, the Individual stated that he “did not realize [the accounts] were over 120 days past due” and the omissions were “not deliberate.” *Id.*

## V. Hearing Testimony

At the hearing, a former coworker (Coworker) testified on the Individual’s behalf. Tr. at 10. The Coworker testified that he had known the Individual since 2001 and worked with him regularly from approximately 2001 to 2006. *Id.* at 13. According to the Coworker, he and the Individual continued to work together on a more limited basis until 2008. *Id.* at 14-15. The Coworker stated that the relationship was solely professional and did not involve any social interaction outside of work. *Id.* at 15-16. He noted that he finds the Individual to be trustworthy, and he testified that he has “never had any doubt about [the Individual’s] – commitment to the national security.” *Id.* at 19, 21.

### A. Testimony Regarding the 2011 Suspension of Clearance

The Individual acknowledged that his security clearance was suspended “around 2011” and noted that he did not disclose his misuse of a corporate credit card on his QNSP but, instead, attributed the suspension to his job performance. *Id.* at 25, 30, 32. He further testified that he provided this answer because he “just assumed that it was all job-related performance,” and he “didn’t look at it from the perspective of it was just the misuse of the credit card.” *Id.* at 30. The Individual characterized his answers on the QNSP regarding the suspension of his clearance as “a mistake.” *Id.* at 31.

Turning to the September 2021 ESI, the Individual testified that he stated that his clearance was suspended due to “financial issues” because he “probably lumped everything together into financial issues, both misusing the card and financial issues together when [he] said that.” *Id.* at 33. When asked why he did not disclose this information until the TESI, he said he “really [didn’t] know the answer to that question.” *Id.* at 74.

### B. Testimony Regarding the Individual’s Bipolar Mood Disorder Diagnosis

The Individual testified that he had been diagnosed with BPD once “roughly” around 2010.<sup>5</sup> *Id.* at 36. He explained that he answered “no” on the QNSP with regard to the diagnosis because “every other psychiatrist, psychologist, mental health person [he has] discussed this with all have said

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<sup>5</sup> During a 2011 Personnel Security Interview, the Individual disclosed that he was diagnosed with BPD in 2010 by a psychiatrist (First Psychiatrist) he saw approximately three to four times. Ex. 17 at 168. He stated that he began to see a new psychiatrist (Second Psychiatrist) because he did not like the First Psychiatrist, and he was moving his practice to telemedicine. *Id.* at 166. The Individual indicated that the Second Psychiatrist agreed with the BPD diagnosis though the Individual said the Second Psychiatrist “thought it was a little nebulous.” *Id.* at 169. He explained that, at that time, he was also seeing a psychologist (Psychologist) who, according to the Individual, said that she understood why the psychiatrists made the BPD diagnosis but would not have diagnosed it herself. *Id.* at 184.

[he] do[es] not exhibit signs of bipolar disorder.” *Id.* at 36. The Individual stated that he was “looking at the question from a different perspective, not the way the question was actually written.” *Id.* at 38.

### C. Testimony Regarding the Individual’s Financial Issues

Turning to his QNSP answers related to his finances, the Individual acknowledged that he answered “no” to the question about whether he had failed to pay Federal taxes in the last seven years. *Id.* at 50. He stated that answering yes “would have been a better answer,” but he defended his answer, stating that he had always filed his taxes and had taxes withheld from his paycheck. *Id.* at 47, 50. The Individual explained that the unpaid taxes were related to his wife’s private business. *Id.* at 48. Although the Individual conceded that he “hadn’t been paying the proper amount of taxes,” he stated that he “didn’t look at [the QNSP question] from that perspective” and that had been a “mistake.” *Id.* at 51, 70.

In addressing his answers related to the charged off accounts, the Individual stated that, in failing to list his charged off accounts, he “just plain made a mistake when [he] answered.” *Id.* at 52-53. He further indicated that he had forgotten that some of the accounts existed. *Id.* The Individual elaborated, stating that he was not attempting to hide the debts, as he knew DOE could access his credit reports, but he “was incorrect in answering that question.” *Id.* at 53-54.

Regarding the Individual’s past due accounts, the Individual testified that, at the time he completed the QNSP, he had not “seen a credit report in quite a while,” and although he knew that he had “many, many debts” that were past due, he did not know that they were 120 days past due. *Id.* at 56-57. The Individual acknowledged that he answered the question regarding debts over 120 days past due incorrectly, and he stated that it was his “fault” for failing to obtain a credit report or failing to verify the due dates of the debts. *Id.* at 57.

## 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 determined that the Individual has not sufficiently mitigated the security concerns cited by the LSO under Guideline E of the Adjudicative Guidelines. Therefore, I find that the Individual should be denied access authorization. The specific findings that I make in support of this decision are discussed below.

Regarding Guideline E, “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities” may raise a security concern and may disqualify an individual from receiving a security clearance. Adjudicative

Guidelines at ¶ 16(a). “Deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative” may also disqualify an individual from holding a clearance. *Id.* at ¶ 16(b).

An individual may also mitigate the concerns if he shows:

- (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.

*Id.* at ¶ 17.

Here, the Individual failed to accurately answer at least six questions on his QNSP. *See id.* at ¶ 16(a). When given the chance to correct his answers in the September 2021 ESI, the Individual instead continued to withhold the information by telling investigators that his clearance had previously been suspended exclusively due to his financial issues, excluding the information

surrounding his misuse of a corporate credit card. *See id.* at ¶ 16(b). It was not until the TESI in October of 2021 that the Individual admitted that his clearance had been suspended because of his misuse of a corporate credit card. However, the Individual did not disclose the full extent of his misuse of the corporate credit card, his diagnosis of BPD, his tax issues, his charged off accounts, or his past due debts until the March 2022 LOI. As there is no indication that the Individual made prompt and good-faith efforts to correct his omissions and concealments before he was confronted with the facts, I cannot find that the Individual mitigated the security concerns pursuant to Adjudicative Guideline ¶ 17(a).

Similarly, I cannot find that so much time has passed or the concerning behavior was minor or happened under such infrequent or unique circumstances that it is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment. The QNSP and interviews were all completed within the previous two years, and, according to the Individual, he repeatedly viewed the questions from a perspective that differed from how they were expressly written. Furthermore, the Individual acknowledged that he mistakenly or erroneously answered multiple questions. As such, I cannot find that the Individual has demonstrated that his concerning behavior is unlikely to recur or that the circumstances surrounding his relatively recent and repeated failure to provide accurate and candid answers do not cast doubt on his judgment, reliability, or trustworthiness. Therefore, the Individual has not mitigated the security concerns pursuant to Adjudicative Guidelines ¶ 17(c).

Although the Individual has acknowledged that he made numerous errors in his provision of information throughout the clearance application process, I cannot find that the Individual has mitigated the security concerns pursuant to mitigating factor ¶ 17(d). The Individual has not sufficiently detailed his plan for ensuring that he will be able to provide complete and fully candid answers to the DOE in future. As such, I cannot find that the behavior at issue here is unlikely to recur.<sup>6</sup>

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

## **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

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<sup>6</sup> Mitigating factor ¶ 17(b) is not applicable as the Individual does not allege that the answers he provided throughout the clearance application process were caused or contributed to by advice of legal counsel or other advisor. Similarly, mitigating factor ¶ 17(f) is not applicable as there is no indication in the record that the information obtained by DOE derived from an unsubstantiated source or source of questionable reliability, and mitigating factor ¶ 17(g) is not applicable as there is no allegation of criminal activity herein. Further, I cannot find that mitigating factor ¶ 17(e) is applicable here because the DOE did not allege that the Individual was vulnerable to exploitation, manipulation, or duress.



the security concerns associated with Guidelines E. Accordingly, I have determined that the Individual should not be granted access authorization. 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