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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: September 30, 2022) Case No.: PSH-22-0140
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_____)

Issued: March 16, 2023

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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.”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 should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) discovered concerning information regarding the Individual’s personal conduct, financial conduct, and criminal conduct. The LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline E, Guideline F, and Guideline J of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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.

hearing. At the hearing, the Individual testified on his own behalf. No other witnesses were called to testify. The LSO submitted eight exhibits, marked Exhibits 1 through 8.² The Individual submitted seven exhibits, marked Exhibits A through G, which are included in the LSO's exhibit workbook within Exhibit 2.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1.

Guideline E provides that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. “Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* A condition that could raise a security concern is the “[d]eliberate 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, . . . [or] determine national security eligibility or trustworthiness[.]” *Id.* at ¶ 16(a). Another condition is

Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of . . . a pattern of dishonesty or rule violations[.]

Id. at ¶ 16(d).

In the SSC, the LSO cited the Individual's instances of failing to follow his employer's rules and procedures and a negative report from a former employer that stated, among other things, that he was terminated for job abandonment; he is not recommended for a position impacting national security; and he lacks honesty, reliability, and integrity. Ex. 1 at 5. The SSC further listed twenty-one instances of the Individual omitting requested information from the Questionnaire for National Security Positions (QNSP) he certified in September 2021 related to his personal relationships, financial information, and employment history. *Id.* at 6–7. The cited information justifies the LSO's invocation of Guideline E.

² The LSO's exhibits were combined and submitted in a single, 428-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself. Exhibit 2 is composed of the Individual's exhibits, which were submitted to the DOE as part of the administrative review hearing process. Ex. 2 at 33–67.

Guideline F provides that an individual’s “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern include an individual’s “inability to satisfy debts[.]” “unwillingness to satisfy debts regardless of the ability to do so[.]” and a “history of not meeting financial obligations[.]” *Id.* at ¶ 19(a), (b), and (c). In the SSC, the LSO cited that the Individual had five separate collection accounts that totaled \$6,085, and he had four separate charge-off accounts that totaled \$18,269. Ex. 1 at 7-8. The cited information justifies the LSO’s invocation of Guideline F.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). The SSC cited that the Individual had a history of more than twelve separate criminal charges spanning 2009 to 2021, mainly related to the unlawful operation or possession of a motor vehicle. Ex. 1 at 8–9. The list included six convictions for motor vehicle-related charges, the most recent of which occurred in 2017 for operating a vehicle without registration or with expired tag and liability insurance; several instances of failing to appear in court or bench warrants being issued, including most recently in June 2021; and allegations that the Individual remains “wanted” related to 2018 charges for no license plate and abandoned vehicle. *Id.* The cited information justifies the LSO’s invocation of Guideline J.

III. REGULATORY STANDARDS

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

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

§ 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

A. Guideline E

The record contains the following information related to the allegations contained in the SSC cited above regarding the Individual's unwillingness to follow rules and regulations with regard to employment. Ex. 1 at 5. First, an investigative report provided by the U.S. Office of Personnel Management (OPM Report) contains information that the Individual had been "coached" regarding issues with his character and failure to follow rules and procedures while employed at a company ("Employer 1") from mid-2020 until early 2021. Ex. 8 at 288–98. Specifically, the OPM Report contains a summary of an interview with the Individual's former supervisor at Employer 1. *Id.* at 298. That summary recounts that at the beginning of the Individual's employment with Employer 1 in 2020, the supervisor coached the Individual "regarding issues with his character and following rules and procedures." *Id.* at 246, 298. After the coaching, the Individual's conduct reportedly improved. *Id.* at 298. During a 2021 Enhanced Subject Interview conducted by an investigator from OPM, the Individual denied that he experienced any issues at this position and stated that he followed workplace rules and regulations and met performance expectations. *Id.* at 246-47. At the hearing, the Individual continued to deny that he had been coached or counseled while employed at Employer 1. Hearing Transcript (Tr.) at 11.

Second, the OPM Report contains a summary of an interview with a Human Resources representative ("HR source") from another company that also employed the Individual (Employer 2) from mid-2020 to early 2021. Ex. 8 at 333. Therein, the HR source reported the following: the Individual "is not trustworthy or reliable"; he "did not demonstrate prudence in the appropriate handling of important information as a requirement of his job"; he communicated poorly with leadership; he lacked concern for his subordinates' safety; and he did not take responsibility for the things he did wrong. *Id.* at 333. The HR source also reported that the Individual was placed on a Performance Improvement Plan and terminated "voluntarily for job abandonment because he never returned" to work, missing approximately seven shifts without notice. *Id.* The HR source indicated that, upon being terminated, the Individual failed, despite requests, to return company-owned equipment. *Id.* at 334.

At the hearing, the Individual testified that he did not recall being placed on a Performance Improvement Plan during his tenure with Employer 2, but he did recall receiving "coaching" because his supervisor at Employer 2 thought he needed to improve his performance. Tr. at 22, 25. He added that he had an issue with this supervisor, and he went to human resources to address his concerns that he was being treated unfairly. *Id.* at 23–24. He also disputed that he underperformed, testifying that he had a lot more responsibility than other colleagues. *Id.* at 24–26. He said his relationship with his employer became "acrimonious" near the end, and he experienced a "hostile work environment." *Id.* at 27. He further testified that when he discussed his concerns with his supervisor, his supervisor said, "if you're so unsatisfied, then why don't you go ahead and quit,"

which is what the Individual stated he did. *Id.* at 27–28. As to how he quit, he stated that at the end of the workday he left his equipment at his supervisor’s office and left. *Id.* at 28, 35. He denied the allegations that he failed to return company equipment. *Id.* at 35. He denied that he was fired for job abandonment by explaining that he quit after his supervisor told him to; thus, he did not believe that he was required to give notice at that point, stating “what am I supposed to say to that? I’m supposed to write you a letter after you tell me to go ahead . . . quit, leave[.]” *Id.* at 28–30. He testified that, in retrospect, he would have pursued his concerns related to his supervisor differently by “probably go[ing] up higher” to corporate until he obtained the resolution he believed to be appropriate. *Id.* at 31.

Turning to the remaining Guideline E issues, the Individual failed to provide required information in his 2021 QNSP related to relationships, employment information, and collection accounts and unpaid debts. Ex. 1 at 6–7. The Individual testified that his failure was due, generally, to “rush[ing] through [the QNSP]”: he “didn’t do it very thoroughly” and just “wanted to get it done[.]” Tr. at 38. The first set of omissions recounted in the SSC are the Individual’s failure to list his mother-in-law, his father-in-law, and a cohabitant. Ex. 1 at 6. The Individual testified that he simply forgot to list his mother-in-law. Tr. at 39. He testified that he did not list his father-in-law because that person is deceased and he had never met him. *Id.* As for the cohabitant, the Individual confirmed that he failed to disclose the person on the QNSP and subsequently during his first conversation with the OPM investigator.³ *Id.* at 40–41, 46. The second set of QNSP omissions included his failure to disclose five former employers. Ex. 1 at 7. One of them was Employer 2. Tr. at 44. He explained that he did not list Employer 2 because he “was working with another company at the time” he completed his QNSP, and he reported “the most current company[.]” *Id.* at 45. He explained that “he should have read” the QNSP instructions more carefully, and he denied attempting to conceal his record with Employer 2. *Id.* Regarding the other four employers, he testified that he did not list them because they were temporary jobs. *Id.* at 46. The last set of omissions regard his failure to list twenty-one instances of derogatory financial information, including collection accounts from creditors and charge-off accounts. He explained that he did not think to obtain a credit report before he completed the QNSP. *Id.* at 51. He testified that in the future he would disclose any issues related to his financial condition. *Id.* at 54.

B. Financial Conduct

The Individual provided the following information related to the five collection accounts and four charge-off accounts listed in the SSC.⁴ In his written response to the Notification Letter, the Individual denied knowledge of four out of the five listed collection accounts, which totaled \$6,085. Ex. 2 at 23. He admitted to the validity of one collection account that totaled \$30, and he reported that he had satisfied the balance. *Id.* During the hearing, the Individual provided details regarding each of the four remaining collection accounts. Regarding a \$2,252 collection account with a mobile phone provider, the Individual indicated that he had since determined that that amount resulted from transferring his mobile phone to a different provider. Tr. at 55. He testified

³ The Individual denied that the investigator asked him about any cohabitants during their first interview. Tr. at 40–41. Under specific questioning, however, the Individual conceded that he was “sure [the investigator] did” ask him whether he had a cohabitant. *Id.* at 46–48. However, he also testified that he did not recall his response. *Id.* at 48–49.

⁴ The information cited in the SSC derived from a 2021 credit report included in the record. Ex. 5.

that the collection account is being resolved with the help of a credit counseling service and that the amount owed has since been reduced to \$376. *Id.* at 56. The Individual testified that, as to a collection account for \$1,900 stemming from a debt to a company entitled Speedy Cash, he was in the process of resolving the dispute so that it will be removed from his credit report. *Id.* at 58. The Individual also testified that he was disputing a 2020 collection account that originated with a separate mobile phone service provider in the amount of \$1,271 because he did not have any outstanding debt with the company. *Id.* at 59. Lastly, he addressed a 2016 collection account originating with an insurance company in the amount of \$549 by testifying that he is a current customer of the same insurance company and that the debt is incorrect. *Id.* at 61–62.

Next, the Individual provided testimony regarding the four charge-off accounts, which totaled \$18,269. Ex. 7 at 8. The first account was from a vehicle credit company and totaled \$18,197. *Id.* The Individual explained that he had financed the vehicle but returned it because he could not and did not want to keep making payments on it, he thought that the matter was settled because he never heard back from the company after turning over the keys, and he only learned about the charge-off during his clearance investigation. Tr. at 63–64, 67. The record includes a summary of the court proceedings related to this account. Ex. 8 at 357. The summary indicates that the Individual was “duly summoned” and failed to appear at the court date, which resulted in a default judgment in favor of the vehicle credit company. *Id.* Regarding a second charge-off account for \$72, the Individual could not recall obtaining the debt. Tr. at 68–72. The third charge-off account, a default judgment entered against the Individual in 2018 which totaled \$980, related to an apartment the Individual rented. *Id.* at 72; Ex. 8 at 359. He testified that he never received a court summons, and he only found out about the judgment when he attempted to rent a different apartment. Tr. at 73. The record indicates that the Individual was lawfully served a court summons by a process server “at the posted residence” before the default hearing. Ex. 8 at 359. The Individual testified that the landlord had incorrectly charged him for additional months of rent after he moved, which was eventually corrected. Tr. at 73.

Lastly, the Individual testified about the allegation that he had unpaid state income tax liability for 2013, 2014, 2016 and 2020. *Id.* at 75. The record includes information developed by the OPM investigator that the Individual entered into a payment plan with the state tax authority in 2021 to address his delinquent tax balance of \$17,878 from the above years. Ex. 8 at 280. At the hearing, the Individual testified that he had actually been paying income taxes in a different state at that time and therefore he disagreed with the allegation that he owed the state money for unpaid taxes. Tr. at 76–77. He also testified that he had filed his own tax returns for the above years. *Id.* at 82. He testified that he had consulted with a law firm six months prior to the hearing to address the issue, and he was still “waiting for an opening” to hire them. *Id.* at 77. He testified that he is also presently “making payments with the [state]” while it is being resolved. *Id.*

The Individual testified that he presently meets all of his financial obligations. *Id.* at 86. He also testified that he had hired a local, for-profit company to help him resolve the issues with his credit report so that he can purchase a home, and he pays “the service directly for all [his] bills[.]” *Id.* at 53, 86–87. He testified that he could not locate any nonprofit companies that could provide similar services. *Id.* at 87. He testified that he pays the for-profit company \$280 a month, but that amount does not go toward satisfying any outstanding debt and is instead a fee for their services. *Id.* at 89.

C. Criminal Conduct

The record demonstrates that the Individual's twelve criminal charges from 2009 to 2021 listed in the SSC all relate to his operation or ownership of a motor vehicle and his failure to appear in court. Ex. 2 at 8–9; Ex. 6 at 102–03. The Individual's most recent criminal charges are charges incurred in 2019 and 2021 for failure to appear in court. Ex. 8 at 352. The record also identifies the following criminal charges against the Individual: a 2018 charge for Abandoned Vehicle Left over 48 Hours for which a bench warrant was issued, *id.* at 349; a 2018 charge for No License Plate for which a bench warrant was issued, *id.*; a 2017 charge for Operating a Vehicle Without Registration or with Expired Tag and Liability Insurance, *id.* at 392–93; a 2014 charge and conviction for Displaying Expired License Plate for which a bench warrant was issued and his license was suspended, *id.* at 349; a 2012 charge and conviction for Driving Without a Driver's License on Person and Displaying Expired License Plate, *id.* at 349–50; a 2012 charge for Driving Without a License and Displaying Expired License Plate for which a bench warrant was served on the Individual, *id.* at 350; a 2010 charge and conviction for Fail to Dim Lights for which a bench warrant was served on the Individual, Ex. 9 at 350–51; a 2010 charge and conviction for Abandoned Vehicle on Public Property and Displaying Expired License for which a bench warrant was issued, Ex. 8 at 343, 351; a 2010 charge for Displaying Expired License Plate for which a bench warrant was issued, *id.*; and a 2009 charge for Driving While Suspended, *id.* at 425.

The Individual testified that his 2021 and 2019 charges for failure to appear stemmed from an underlying ticket for failure to register his vehicle. Tr. at 95; *see also* Ex. 2 at 25 (explaining that he missed court because he was unaware he had to appear in court). The Individual testified that many of his criminal charges related to his failure to register his vehicle. Ex. 2 at 25–28. The Individual testified that all of the issues dating back to 2010 related to the same vehicle. Tr. at 109. He explained that the vehicle was inoperable, so he parked the vehicle in front of his house. *Id.* at 96–97. He testified that he “didn’t want to get rid of it . . . [for] nostalgic reasons[,]” and he “tinkered around with the car all the time.” *Id.* at 97. He testified that he did not want to register it because it was not running. *Id.* at 97–98. The Individual later admitted that he had received tickets in separate locations because “the car ran a little bit.” *Id.* at 100–01. He testified that he only learned that his vehicle had been receiving citations when it was towed from the front of his house in 2017 or 2018. *Id.* at 109–10. The Individual also testified regarding his charges for driving on a suspended license. *Id.* at 111–12. He testified that he was stopped by law enforcement and gave the officer a license from one state, and the officer told the Individual that the Individual's license in a different state was suspended, which also meant that the first license was suspended. *Id.* at 112.

The Individual testified regarding the bench warrants being issued and served related to the charges listed in the SSC. The Individual first indicated that he “never received, like personally, a bench warrant.” Tr. at 114. He testified that he could not recall ever being approached by an officer or being arrested pursuant to a warrant. *Id.* He then later testified that he recalled an officer taking him “back to the station” pursuant to a warrant in approximately 2016 and being released that same day on a “[Personal Recognizance] bond.” *Id.* at 120.

The Individual testified that he never received notice of the citations and bench warrants regarding the vehicle he parked in front of his home because they were never “actually physically” given to

him. Tr. at 116. He testified that he did not live in the home, which had been instead occupied by his family. *Id.* at 118. He testified that he never saw any tickets on the car. *Id.* at 117–18. However, he later testified that “the tickets themselves were placed on the car . . . [by] code enforcement,” and he believed that code enforcement “should have actually just knocked on the dang door.” *Id.* at 119. As to why code enforcement should have knocked on the door to his residence despite the car being unregistered, the Individual testified that “[the car] was in the front of the house. Why would you not inquire that? Why would you not just knock on the door?” *Id.* at 119–20. He testified that, going forward, he would follow laws and rules. *Id.* at 118–19. He testified that his present vehicle is registered. *Id.* at 121–22.

In closing, the Individual testified that “the tickets have been paid[,]” “the taxes stuff is being worked on[,]” “the credit stuff is being taken care of[,]” and “all these items are works in progress.” *Id.* at 124.

V. ANALYSIS

A. Guideline E Considerations

Conditions that can mitigate security concerns based on personal conduct include the following:

- (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, judgement, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

I find that none of the above conditions apply to resolve the Guideline E concerns. Several of the factors clearly do not apply based on the record. Paragraph 17(a) does not apply because there is no evidence that the Individual made prompt, good-faith efforts to correct the omissions throughout his QNSP before being confronted with the facts. Paragraph 17(b) does not apply because there is no evidence in the record that his failure to cooperate, omission, or concealment was caused by advice from another individual. And ¶ 17(g) does not apply because the security concerns are not based on the Individual's association with persons involved in criminal conduct.

Turning to the remaining factors, ¶ 17(f) does not apply because most of the conduct cited in the SSC is either admitted by the Individual or derived from sources that I conclude are reliable. There is no dispute that the Individual failed to disclose the information on his QNSP because he admitted it by stating that he failed to pay attention and rushed through completing the paperwork. Regarding the allegations related to his unwillingness to follow his employer's rules and regulations, I find that the allegations do not come from unreliable sources. Sources from two separate companies indicated the Individual had issues following rules and procedures. The independence of the reports adds to their credibility, and the Individual did not provide evidence to demonstrate that either his supervisor from Employer 1 or the HR source from Employer 2 were unreliable.

Finally, I do not find ¶ 17(c), ¶ 17(d), and ¶ 17(e) applicable for the following reasons. First, the record does not establish that the Individual's conduct is minor. Not only does the record contain allegations that he failed to follow his employer's rules or regulations, including job abandonment, but the Individual made over 20 omissions throughout the QNSP, representing significant concerning conduct. I am also skeptical of his attempt to blame his omissions on "rushing." This explanation does not adequately explain why he failed to disclose his cohabitant to the OPM investigator during the first interview. I am similarly skeptical of his reason for failing to disclose in his QNSP his employment with Employer 2; the weight of the evidence does not remove my concern that he was attempting to avoid the consequences of his conduct while employed at that company and others. I question the Individual's trustworthiness and reliability based on his failure to acknowledge and take responsibility for his concerning conduct, and I remain concerned that the Individual will reengage in the same behavior. For these reasons, I find that the passage of time, the frequency of his conduct, the attendant circumstances, and the actions he has since taken do not mitigate the concerns. Accordingly, I conclude that the Individual has not resolved the Guideline E security concerns.

B. Guideline F Considerations

Under Guideline F, the following conditions could mitigate security concerns based on financial considerations:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The conditions that resulted in the financial problem were largely beyond the person's control[,] . . . and the individual acted responsibly under the circumstances;
- (c) The individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and
- (g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

I find that none of the above conditions apply to resolve the Guideline F concerns. Paragraph 20(a) does not apply for the following reasons. First, the Individual's behavior did not happen long ago, and the record does not establish that his conduct is mitigated by its infrequency or any related circumstances. At the hearing, the Individual did not present persuasive evidence that he had resolved all of the past due and charge-off accounts. He testified that he is "still in the process" of addressing some of the outstanding issues, several of which he disputes.

Furthermore, I do not find that the conditions that resulted in the financial problems were beyond his control or that the individual acted responsibly under the circumstances. Thus, ¶ 20(b) does not apply. By way of example, even if the Individual was not liable for the tax liability cited in the SSC, he is the only person responsible for filing the tax returns that prompted the liability, and he similarly is responsible for his decision to delay attempting to correct the disputed liability until relatively recently by consulting with, but not hiring, a law firm six months prior to the hearing. Furthermore, the record does not support a finding that his non-tax related financial issues resulted from anything beyond the Individual's control. Going further, the fact that he denied knowledge of the vehicle credit company liability at the hearing, despite the record indicating he was served a summons for a suit to enforce the debt, indicates his present unwillingness to take responsibility for his financial problems.

Further still, ¶ 20(c), ¶ 20(d), and ¶ 20(e) do not apply for the following reasons. First, while the Individual testified that he is receiving credit counseling to assist him in resolving the debt, he did not provide any documentation to support this claim, and I am doubtful of the legitimacy of the credit counseling provider given that it is for-profit and there is no documentation that indicates the counseling service has assisted the Individual in resolving the past due amounts listed in the SSC. Therefore, the record does not provide clear indications that the problem is being resolved or is under control. I similarly conclude that the record does not demonstrate that the Individual initiated and is adhering to a good-faith effort to repay each overdue creditor or otherwise resolve all of his debts. In addition to the above, the Individual disputes many of the debts but failed to provide any documented proof to substantiate his dispute.

Paragraph 20(f) does not apply because none of the allegations contained in the SSC reference the Individual's relative affluence.

Finally, ¶ 20(g) does not apply because, while the record indicates that the Individual made arrangements with the appropriate tax authority to pay the amount owed, there is no corroborating evidence to establish that he is in compliance with those arrangements, and there are still unresolved financial concerns unrelated to his state tax liability. Accordingly, the Individual has not resolved the Guideline F concerns.

C. Guideline J Considerations

The Adjudicative Guidelines provide that 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) 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 above mitigating conditions do not apply to resolve the Guideline J concerns. Paragraph 32(a) does not apply for the following reasons. Relatively little time has elapsed since the Individual's most recent criminal charge for failure to appear, which occurred just over one year and seven months from the hearing date. The relative recency of that incident and the preceding decade of similar conduct, including a 2019 charge for failure to appear, establishes a pattern that reflects an

unwillingness to comply with laws or regulations despite repeated consequences. Accordingly, I cannot find that the circumstances surrounding his criminal conduct were unusual such that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment.

Paragraph 32(b) does not apply because there is no credible evidence of coercion or pressure in the record.

Paragraph 32(c) does not apply because the Individual did not establish by testimony or exhibits that the various instances cited by the SSC were inaccurate. Some of the conduct the Individual admits, like failing to register his vehicle despite several citations and failing to appear in court in 2021 and 2019.

Lastly, ¶ 32(d) does not apply because the record does not demonstrate that the Individual is successfully rehabilitated. His testimony indicates a present inability to acknowledge and take responsibility for his conduct. His attempt to blame several of his criminal charges on the enforcement officer not delivering the tickets to his door—even though his vehicle was unregistered and the citations were placed on his vehicle—is a failure to acknowledge responsibility for his criminal conduct. The same failure is reflected by a lack of credible explanation as to why he continued to engage in similar conduct despite being served warrants and receiving guilty convictions. In reaching my findings here, I incorporate my above analysis regarding the Individual's unwillingness to take responsibility for his conduct under Guideline E. I also note my concern that he attempted to deny ever being served a warrant in relation to his criminal charges, which reflects a lack of candidness. Accordingly, the Guideline J security concerns have not been resolved.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E, Guideline F, and Guideline J of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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 at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals