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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: December 28, 2022 ) Case No.: PSH-23-0041  
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Issued: April 11, 2023

**Administrative Judge Decision**

Brenda B. Balzon, 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.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be granted.

**I. Background**

The Individual is employed by a DOE contractor and is an applicant for a position that requires him to hold a security clearance. In its investigation, the DOE Local Security Office (LSO) discovered derogatory information regarding the Individual’s personal conduct relating in part to the Individual’s failure to comply with COVID-19 virus (COVID) precautions. The LSO informed the Individual by letter (“Notification Letter”), that it possessed reliable information that created substantial doubt regarding his eligibility to hold 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 of the Adjudicative Guidelines. Exhibit (Ex.) 2 at 4–5.<sup>2</sup>

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

<sup>2</sup> The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibits. This decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of four witnesses, including himself. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO did not call any witnesses, and submitted nine exhibits, marked Exhibits 1 through 9.<sup>3</sup> The Individual submitted 24 exhibits, marked Exhibits A through X.

## **II. Notification Letter and Associated Security Concerns**

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the basis for its concerns regarding the Individual’s eligibility for access authorization. Ex. 2 at 4–5. Under Guideline E, “[c]onduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. Conditions that could raise a security concern under Guideline E include “refusal to provide full, frank, and truthful answers to lawful questions of investigators . . . or other official representatives in connection with a personnel security or trustworthiness determination[.]” *Id.* at ¶ 15(b). Another condition that could raise a concern under Guideline E is “[c]redible 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, [or] unwillingness to comply with rules and regulations[.]” *Id.* at ¶ 16(d). Examples of concerning behavior include “[a] pattern of dishonesty or rule violations[.]” *Id.* at ¶ 16(d)(3).

In the SSC, the LSO asserted that on August 9, 2021, the Individual was placed on a Site Access Restriction (SAR) due to violating his employer’s mask-wearing policy when he entered the facility unvaccinated and not wearing a mask, and he reported to work while COVID positive. Ex. 2 at 4. The LSO further asserted that the Individual tested positive for COVID on August 9, 2021, and on August 10, 2021; the Individual subsequently disclosed in an Enhanced Subject Interview (ESI) and in his Letter of Interrogatory (LOI) response that he knowingly provided his employer’s medical staff false information about his initial COVID test by stating that he was unable to get tested on August 9, 2021; on August 11, 2021, the Individual disclosed his second positive test from August 10, 2021, to his employer’s medical staff; and he acknowledged that he had been untruthful with the medical staff about the results of his first COVID test because he was nervous that he would potentially lose his job. *Id.* at 5. Additionally, the LSO cited that video footage from his employer revealed the Individual entered the facility without wearing a mask or properly displaying his security identification badge in what appeared to be an attempt to hide his vaccination status. *Id.* The above allegations justify the LSO’s invocation of Guideline E.

## **III. Regulatory Standards**

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<sup>3</sup> Prior to the hearing, the LSO withdrew previously submitted versions of Exhibits 6 and 7 which both contained an unredacted investigation report from the Individual’s employer. The LSO subsequently resubmitted Exhibits 6 and 7 which contained a redacted version of the report; these withdrawals and substitutions were agreed upon by both parties.

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.

#### **IV. Findings of Fact and Hearing Testimony**

The record contains information from an investigative report produced by the Individual's employer (the “Report”). The Report related to allegations concerning the Individual's violations of COVID related rules and policies in addition to providing false information with regard to his COVID test results. The Report stated that on August 9, 2021, a review of video footage showed that the Individual was in the worksite facility (hereinafter “the plant”), not wearing a mask, and a review of the employer's immunization and medical records indicated no evidence that the Individual had been immunized. Ex. 6 at 5. Additionally, it stated that someone had reported that the Individual had tested positive for COVID, had not informed management, and was still going to work. *Id.* Subsequently that day, the Individual was escorted from the plant and told not to return without proof of vaccination or a negative COVID test. *Id.* Security operations supervisors also determined through review of video footage that the Individual had not previously been wearing a mask when entering the plant since August 4, 2021. *Id.* at 6. Additionally, the Report stated that the Individual informed the employer's site physician that he had received a positive result from an August 10, 2021, COVID test (hereinafter “August 10 COVID test”), and he told the site physician that he had meant to get tested on August 9, 2021, but was unable to do so due to the lateness of the day. *Id.* However, on August 12, 2021, the Medical Director of the state Department of Health informed the site physician that the Individual had tested positive for COVID twice—on August 9, 2021 (hereinafter “August 9 COVID test”) and the next day, August 10. *Id.* The Report found that the Individual had deliberately violated employer procedures by deliberately obscuring the fact that he did not have a vaccine badge (card) by placing his hand over his badge when verifying his identity at the “search train,” and intentionally turned his badge around backward after passing the guard station. *Id.* at 9.

During an interview with the employer's investigator on August 20, 2021, the Individual acknowledged that he had seen his employer's notification of the changed mask policy for non-immunized employees and admitted that he understood he was supposed to be wearing a mask at work. *Id.* at 12. As for why he chose not to wear a mask, he stated "I noticed other people doing the same thing. That's no excuse on my part." *Id.* He stated that his first positive COVID test was August 9, which was a Monday. *Id.* at 13-14. When asked why he provided the site physician false information, the Individual stated that he took a test on Monday, Tuesday, and Friday, and that Monday and Tuesday were positive tests. *Id.* at 13-14. He stated he only told the site physician the results of the second positive test, and asserted, "I just gave him the latest, up to date information." *Id.* at 14. Regarding the allegations of obscuring his badge, the Individual stated that "unless [he] got in an unintentional habit he never touched [his badge] before . . . [and] that was not [his] intent. *Id.* The investigator concluded that the Individual had "demonstrated that he is neither trustworthy nor reliable through his actions and lack of judgment." *Id.* at 9. The investigator stated the following opinion in the Report: "In spite of the fact that he was clearly upset and afraid during the interview, expressed his embarrassment that he let himself and his co-workers down, and apologized profusely, he was not forthcoming [and] provided incomplete, or misleading answers to questions." *Id.*

During an ESI on July 18, 2022, the Individual told an Office of Personnel Management (OPM) investigator that he falsely told the site physician that he had not taken a COVID test on August 9 because he was "scared and very nervous and he did not know what to do." Ex. 4 at 56. The Individual also explained that his additional reasoning for providing untruthful statements may have been because he "might have been thinking that the employer would ask him to take another test, which would have been a third test, and by that time he would get tested, the test results would be negative." *Id.* He admitted to the OPM investigator that "this was a bad decision on his part." *Id.* On August 15, 2022, the Individual submitted his Response to an LOI by the LSO regarding his noncompliance with his employer's policies and a subsequent suspension that resulted from his actions. Ex. 5. The Individual admitted he "knowingly and intentionally violated [his employer's mask] policy by not wearing a mask" from approximately mid-July 2021 until August 9, 2021. *Id.* He stated he did not knowingly come to the employer's site while being COVID positive because he had not been tested prior to August 9, 2021. *Id.* at 3.

The LOI also asked the Individual about the discrepancy between his explanation from the August 2021 interview and his statements during his ESI. *Id.* at 6. In his LOI response, he stated that when the site physician asked him if he had obtained a test on August 9, he was "still . . . in a state of shock," so he replied that he had not taken a test that day. *Id.* at 4. The Individual asserted there was no real discrepancy because he had admitted in his LOI response that he had been untruthful. *Id.* at 4. However, while he initially stated in his LOI response that he was untruthful because he was "shocked" by his first positive test result, he then stated his reasons for being untruthful were because he was nervous that he would be terminated from his job since he was sick and had not realized it and because he had not been wearing a mask in accordance with the employer's policy. *Id.* He also stated he believed it was good enough to report a positive test result, that "it did not matter if it was taken on the 9th or the 10th [because] it was still the same result," and that both tests had been taken within 24 hours of each other. *Id.* at 1, 4.

In his LOI response, the Individual also provided an explanation for his actions in turning his badge around. *Id.* at 1. He reported that, as far as he could remember, his behavior changed concerning his badge due to an incident in March 2021, when he went through the security gate and a guard chased him down the hallway and told him that he could not see the Individual's badge. *Id.* The Individual stated "[f]rom that time on [he] would pull [his] badge out from the retractable clip and made sure the guard saw [his] badge . . . . It became an unintentional habit of turning [his] badge around when [he] brought it back in to [his] chest. *Id.*

At the hearing, the Individual's coworker testified that he has known the Individual since 2002 and asserted that the Individual is reliable, has a good work ethic, and, other than the current security concerns, has not failed to follow the employer's rules. *Id.* at 14–16, 18. The coworker stated that the Individual told him after the incident that he realized he had made a mistake in failing to wear a mask, he owned up to his mistake, and he expressed remorse. *Id.* at 17–18. He testified that during the time of the Individual's noncompliance with the mask policy, there were "quite a few other people" that the employer identified that were also not wearing a mask while being unvaccinated. *Id.* at 18. The coworker testified that he has never known the Individual to be subject to peer pressure related to not wearing a mask. *Id.* at 38.

The Individual's union president who is also his colleague (hereinafter "union president") testified that he has known the Individual since June 2001, and he finds the Individual to be reliable, trustworthy, and somebody who follows the employer's rules and procedures. *Id.* at 42, 45–46, 54, 63; Ex. B (letter of support dated February 10, 2023). He testified that he had reviewed the Individual's personnel file and found no other disciplinary action in his record except for the current security concerns. Tr. at 49–50. The union president asserted that when the Individual's employer questioned him about the events at issue, he "owned up and took responsibility" for his actions, and he "acknowledged that he let [himself] and his coworkers down." *Id.* at 46; Ex. B at 1. He further asserted that the Individual's concerning actions are "totally inconsistent" with the Individual's overall character and behavior. *Id.* at 62.

The union president stated that the employer sent an email in approximately May 2021 which stated what their employer's policy was regarding wearing a mask. *Id.* at 71, 90–91. The union president acknowledged that when he read the May 2021 email message from their employer regarding the mask wearing policy, he personally had no doubts of what was required of him. *Id.* at 71, 90–91.

The union president testified that he saw the video footage of the Individual going through the security area with his badge. *Id.* at 57. He stated, "If you're inclined to think that [the Individual] was trying to obscure his badge, I can see why someone would view it that way because of the way he was holding it." *Id.* However, he stated that the Individual explained to him that he did not realize that he had been obscuring his badge. *Id.* at 57–58. The union president asserted that he believes the Individual because the Individual was honest about taking accountability for not wearing a mask and not informing the employer's site physician about his first COVID test results. *Id.* at 58. He further stated that he is confident that the Individual will comply with the employer's rules concerning mask and badging policies in the future. *Id.* at 69–70.

In addition to the union president's letter of support, the Individual submitted 18 additional letters of support. Exs. C–J, L–M, and O–V. In their written statements, his coworkers at his DOE contractor job and his outside employment all attested to his various positive character traits such as following rules and regulations, being an ethical, hardworking, knowledgeable employee, and being trustworthy and honest. Exs. D–J, Q–T, and V. Letters from his friends, neighbors, and his wife also attested to the Individual's trustworthiness, and some letters also mentioned his involvement in his church and his Christian faith. Exs. C, H, M, O–P, and T–U.

The Individual's wife testified that she has been married to the Individual since 1999. Tr. at 94. She stated she read the SSC and that the Individual's behavior during the timeframe at issue was "one lapse of judgment" that was inconsistent with his overall character. *Id.* at 101, 113, 115–16. The wife testified that the Individual has expressed remorse and apologized to her almost daily because he put their family in financial risk due to consequences that affected his job. *Id.* at 98–99. She asserted that she believes the Individual will follow rules in the future because he has learned his lesson, has gotten counseling, and has recently increased his involvement in their church activities. *Id.* at 100, 112, 121. She stated that she started noticing these changes in the Individual after he was sent home by his employer due to the security concerns. *Id.* at 140–41. She stated that after he was terminated from his job, the Individual started serving in their church and attending prayer meetings, made a sincere show of faith, became a more attentive husband, and has humbled himself. *Id.* at 98, 121, 140–41. The wife stated that the Individual attended one counseling appointment in February 2023, and has another appointment scheduled in March 2023, because he wanted to prove his behavior is changing and counseling will help with that. *Id.* at 114, 132. She also asserted that the Individual will follow rules in the future because of his overall demeanor of being a rule follower and because the time period of prior COVID restrictions has passed, thereby relieving stressful times. *Id.* at 112.

The Individual testified regarding the circumstances of his decision to stop wearing a mask. He stated that he did not wear a mask during his vacation in July 2021. *Id.* at 158–59. He stated that leading up to his vacation, he had been watching people around him at work who he knew were not vaccinated and "nobody [was] wearing a mask, and . . . nobody had gotten in trouble" by his employer. *Id.* at 159. He testified that after he returned to work, he thought, "Well, nobody else got in trouble. Nobody's paying attention. I'm not going to do it either." *Id.* The Individual further testified that he also stopped wearing a mask because it was uncomfortable and gave him headaches, although he admitted that he would not have stopped wearing a mask if he believed that his employer was likely to take disciplinary action against him. *Id.* at 181. He admitted that he probably had a false sense of security from any disciplinary action brought by his employer because other people were also not wearing a mask. *Id.* The Individual testified that he had not tried to seek any kind of clarification from the union or his employer about whether the mask policy was going to be changed when he saw that some people had stopped wearing a mask. *Id.* at 181–82. He also admitted he never sought any kind of accommodation for his headache issue. *Id.* at 182. He stated that when he stopped wearing a mask, he understood that it could give his employer grounds for discipline against him including a risk of termination, but he indicated he probably did not think it would lead to termination. *Id.* He admitted that it was his responsibility to wear a mask and stated that he was not trying to make any political or policy statement to his employer by choosing to stop wearing a mask. *Id.* at 160, 180.

The Individual testified that he was sent home by his employer's management on the same date that he subsequently took his August 9 COVID test. *Id.* at 184. He stated that his employer had sent him home and told him to get a test because someone had reported that he was knowingly coming into the work site with COVID and not wearing a mask. *Id.* at 183. However, he denied that he had knowingly coming to work with COVID. *Id.* at 183. Regarding his untruthful statements to the site physician, he also explained that since the state Department of Health had contacted the Individual approximately 30 minutes after the Individual had spoken to the site physician, he thought the employer would eventually find out that he had taken a test on August 9. Ex. 5 at 1; Tr. at 187. He acknowledged that when he realized his employer was going to find out about his August 9 test, he should have recontacted the site physician and self-reported his untruthfulness, however, he acknowledged he might have been concerned that if he had he corrected his statement, that might lead to additional consequences. Tr. at 187, 189. The Individual also indicated that he did not disclose his first test results because he may have been thinking that there was only one day in between the results of the first and second tests, both showed the same result, and he had not been back to work since the employer had sent him home. *Id.* at 188.

Regarding the issue with his badge, the Individual stated that because he never got the chance to observe himself on the video footage, he was basing his information on what the investigator who watched the video told him. *Id.* at 154. He asserted that he was not aware that he was turning his badge around after going through the security search train. *Id.* at 151. His testimony confirmed the account of the incident that he provided to the August 20 investigation interviewer and the explanation that he had provided in his LOI response about the March 2021 incident. *Id.* at 151–52; Ex. 5 at 1. Regarding the March 2021 incident and his actions thereafter, he added that he was surprised that he had been accosted about his badge, so he thought, “Well, if they want to see it, I’m going to be a jerk and I’m going to let them see it. So . . . from that point on, . . . when I would go through, I would jerk it out” and show it to them. *Id.* at 152. When asked why he had not explained this at the time of his investigation interview, he stated that he did not know, but he thought he had explained it during the first interview. *Id.* at 153.

The Individual testified as to his efforts to mitigate the Guideline E concerns. He stated that within the first couple of months after his termination, he decided to start serving in his church and serving others, which helped him fill some of the void and cope with difficulties including shame and embarrassment which he felt when he disclosed his employment suspension to his family and friends at church. *Id.* at 164–65. He testified that he also decided to seek counseling based on the advice of his attorney, and he found it beneficial to have some insights from an independent counselor who did not have an opinion one way or the other. *Id.* at 165–66. The Individual stated that he has attended one counseling session so far which was approximately two weeks before the hearing, but during that time they did not discuss anything “deep” because the counselor told him that the first session is focused on whether he and the Individual are a good fit to work together. *Id.* at 206–07; Ex. W (confirmation of counseling appointment on February 14, 2023). The Individual testified that he plans to probably continue attending counseling and that he intends to discuss in counseling his decision-making involving the incidents at issue. Tr. at 208–09; Ex. X (confirmation of counseling appointment for March 2023). Additionally, he made assurances that he will not fail to follow rules again because his ability to financially provide for his family would be put into question if he was terminated from his job. *Id.* at 213. Moreover, he indicated that he signed a “Last Chance Agreement” with his employer, which provides an incentive for him to

follow rules because it states that for the next three years he agrees that he will be subject to “immediate termination without recourse for any action deemed by his employer to indicate issue with untruthfulness, dishonesty, or reliability.” *Id.* at 213. He testified to a recent example that he has complied with his employer’s COVID related rules when, in January 2023, he informed his employer’s medical staff as soon as he found out that he had been exposed to someone who was COVID positive after he accompanied his wife on a business trip. *Id.* at 176.

## V. Analysis

The LSO’s allegations that the Individual demonstrated a pattern of dishonesty and rule violations by violating safety protocol and policy that potentially placed other workers at risk raises security concerns under Guideline E. Adjudicative Guidelines at ¶ 16(d). Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (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.

Regarding the first mitigating factor, the Individual did not make prompt, good-faith efforts to correct the concealment before he was confronted with the facts. He admitted that he provided false information to his employer’s site physician in order to conceal his positive test result



from August 9. He also admitted that once the physician from the State Department of Health contacted him about his August 9 test result, he knew that his employer would eventually learn that he had lied about his first test. However, he still chose not to inform the site physician or employer that he had been untruthful until he was confronted with the facts during an investigation. Further, he admitted that he was scared and nervous when he discovered he had two positive COVID tests and indicated that he was possibly concerned that he would incur further negative consequences if he corrected his statement regarding his untruthfulness. This behavior shows that rather than making prompt, good-faith efforts to correct his omission and concealment of his first COVID test results, he failed to disclose his concerning conduct because he did not want to suffer the consequences of his behavior.

Regarding the second mitigating factor, the Individual, through counsel, apparently argues that the Individual's failure to comply with his employer's policies was influenced by confusion caused by inconsistent messages from federal and state government officials regarding mask policies. Tr. at 217–18. However, the public debate about COVID-related rules including the wearing of masks does not apply to this mitigating factor. The second mitigating factor at ¶ 17(b) applies in circumstances where the Individual's failure to cooperate or omission was caused or significantly contributed to by the Individual receiving advice or instruction from a person with professional responsibilities concerning security processes. In this case, even if the Individual was exposed to messages from politicians, this exposure is not tantamount to personally receiving advice or instruction specifically concerning security processes. Moreover, by testifying that he chose not to wear a mask due to masks causing him headaches and observing other employees who were not wearing masks and not being disciplined, the Individual has thus shown that the reasons for his conduct have nothing to do with following the advice or counsel of others. Therefore, counsel's argument was not supported by any evidence in the record because the Individual did not actually state that he was confused about the mask policy. Accordingly, I do not find ¶ 17(b) applicable to this case.

Turning to ¶ 17(c), the Individual, through counsel, argues that his long, incident-free tenure coupled with the unusual circumstances surrounding his concerning conduct and the passage of time demonstrate that the offense is unlikely to recur and should not cast doubt on the Individual's reliability, trustworthiness, and good judgment. Tr. at 220–221. I disagree. First, I find that the conduct was not minor because there is evidence that the Individual knew that he was violating his employer's masking policies and knowingly and willfully chose to stop wearing a mask on several occasions until he was sent home by his employer. Similarly, the evidence indicates that the Individual did not comply with the rules to properly display his badge, and his actions indicate he may have been attempting to hide his vaccination status. These offenses combined with lying to the site physician about his positive COVID test are not minor because they reflect a pattern of significant dishonesty and rule violations.

Regarding the badge issue, I note that since unvaccinated employees were required to wear a mask during the time of the Individual's noncompliance, it would be consistent for the individual to hide his vaccination status by covering up his badge so that the security guards would not be aware that he was violating the mask policy. Moreover, the Individual's testimony regarding his behavioral change with his badge seems implausible. He asserted that since approximately March 2021, he would prominently show his badge to the security guards

by jerking it out in front of him. However, this seems unlikely because if he was deliberately showing his badge to the guards, presumably the video footage would have shown him clearly displaying his badge, and his employer would not have suspected that he was obscuring his badge. Moreover, the union president acknowledged that after he saw the video footage, he could understand how someone might think that the Individual intentionally obscured his badge because of the way the Individual was holding it. This too seems inconsistent with the Individual's assertions that he was noticeably displaying his badge to security guards. Other than his assertions that it was an unintentional habit, the Individual has not presented sufficient evidence to resolve this inconsistency, and I therefore find it likely that the Individual was attempting to conceal his vaccination status when he entered the plant on August 9, 2021.

Regarding the frequency of his concerning conduct, his employer's investigation uncovered several instances of prohibited conduct within a short period, and it prompted him to engage in additional concerning conduct by refusing to provide a material fact about his positive COVID test to the site physician. I therefore conclude that the concern is not mitigated by infrequency.

Next, I find that the Individual's violation of the employer's rules is not unique. The Individual argues, through counsel, that this is a unique situation because it involves COVID, for which there is now a vaccine, and pandemics are infrequent. Tr. at 220–21. However, the evidence shows that the primary issue is that the Individual willfully chose to disobey his employer's rules because he personally did not like how it affected his physical comfort, saw others failing to follow the rules, and knew that his employer had not taken disciplinary actions against his coworkers who were also noncompliant with rules. He admitted that he developed a false sense of security against the risk of being disciplined and continued this pattern of not following rules, and it prompted him to immediately engage in additional dishonest conduct due to a perceived low risk of further consequences. A pattern of failing to follow rules because of a belief of low risk of getting caught and engaging in dishonesty to avoid negative consequences are not unique circumstances. I find that the Individual's behavior could reoccur in response to other rules at work which he may disagree with if he knows that his employer is not strictly monitoring compliance and sees others not following the rules. As such, I cannot find the behavior is unlikely to recur. Finally, for all the reasons stated above, the passage of approximately 18 months of time since the concerning behavior occurred does not in itself resolve the concern.

Regarding ¶ 17(d), while the Individual admitted his mistake and has expressed remorse, I still have doubt regarding his reliability, trustworthiness, and good judgment. I credit the Individual for his recent actions of seeking counseling; however, to date he has only attended one counseling session, and he was unable to provide examples of how counseling has taught him to change his behavior regarding dishonesty and unwillingness to follow rules. He testified that his intentions are to explore these issues, but he has yet to do so. In addition, I do recognize that a "Last Chance Agreement [for continued employment]" that the Individual signed gives him a financial incentive to follow rules in order to support his family, and I note that the Individual provided an example in January 2023 of reporting his COVID exposure to his employer in accordance with their rules. However, I find that these actions are insufficient to demonstrate that his pattern of concerning behavior has changed to the extent that it is no

longer a security concern. Regarding his increased church involvement, I credit the Individual's efforts that he is making to serve others in his church community. But, assuming *arguendo* that his increased church activities have provided some change, I am still not convinced that his relatively recent increase in church involvement has had such a profound impact on his decision-making at present that his pattern of rule violations is unlikely to recur.

Regarding ¶ 16(e), while the Individual has demonstrated that he is not presently vulnerable to exploitation, manipulation, or duress, because he disclosed his termination to his family and friends from his church, I nevertheless find that, for the reasons explained in my overall analysis, the fifth mitigating factor does not apply to resolve the security concerns.

The information about the Individual's failure to follow rules and his untruthfulness is either admitted by the Individual or derived from sources that I conclude are reliable. There is no dispute that the Individual knowingly and intentionally violated the employer's mask policy, nor is there a dispute as to whether he intentionally provided false information to the site physician regarding his August 9 COVID test. Regarding the badge issue, for the reasons stated above, I find that the Individual has not presented sufficient evidence to resolve this inconsistency. Therefore, because I find that the information regarding the Individual's pattern of failing to follow rules and dishonesty is not of questionable reliability, I conclude that the sixth mitigating factor is inapplicable. *Id.* ¶ 17(f). Finally, the seventh mitigating factor does not apply because the LSO's allegations do not involve association with persons involved in criminal activities. *Id.* at ¶ 17(g). .

## **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 of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be granted.

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

Brenda B. Balzon  
Administrative Judge  
Office of Hearings and Appeals