*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)		
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Filing Date: February 15, 2023	)	Case No.:	PSH-23-0060
	)		
	)		

Issued: July 25, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX 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's access authorization should not be restored.

I. Background

The Individual is currently employed with a DOE contractor in a position that requires her to hold an access authorization. While employed with a second-line subcontractor to a DOE contractor in 2015, the Individual's former spouse called the DOE's Office of the Inspector General (OIG) to report derogatory information pertaining to the Individual. Ex. 3 at 1. Accordingly, the OIG began an investigation into the allegations made by the Individual's former spouse. Ex. 4.

As part of the periodic reinvestigation of her eligibility for access authorization the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in December 2018. Ex. 5. In the QNSP, she provided information pertaining to her residential address, indicating that from November 2007 through July 2014, she lived in her former marital home in State 1, and from August 2014 to April 2015, she lived at a second location in State 1.[2] Ex. 5 at 24–25. She indicated

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

[2] The Individual submitted an email and screenshots of a tenant list from her former landlord indicating that she rented a home at the second address in State 1 from July 2014 to May 2015. Ex. F at 7–13, 15–19; *See* Transcript of Hearing, Case No. PSH-23-0060 at 83–84 (hereinafter cited as "Tr.").

that from April 2015 to July 2015, she resided at two different locations in State 2.[3] *Id.* at 24. From July 2015 through the date of the QNSP, the Individual indicated that she had lived at three separate residences in State 3.[4] *Id.* at 22–24.

OIG completed and issued a report of their findings on September 6, 2022. Ex. 4. As stated in the report, the OIG "investigation focused on violations of . . . 18 U.S.C. § 287 . . . and 18 U.S.C. § 641,"[5] and concluded that the Individual had "signed, certified, and submitted multiple expense vouchers for travel and approximately seven months of per diem as a subcontractor while claiming permanent and duplicate expenses in [State 1]." Ex. 4 at 3. OIG also concluded that the Individual "submitted permanent change of station documentation requesting relocation expenses from [State 1 to State 3]." *Id.* As a result of the aforementioned expenses claimed, the Individual was ultimately paid approximately $48,787.96 to which she was not entitled. *Id.*

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified her that it possessed reliable information that created substantial doubt regarding her continued eligibility for access authorization in connection with her employment, and accordingly, her access authorization had been suspended pending a resolution. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct), F (Financial Considerations), and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on her own behalf and submitted seven exhibits, marked as Exhibits A through G.[6] The DOE Counsel submitted five exhibits marked as Exhibits 1 through 5.

II. Notification Letter

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance.

Guideline E

[3] She testified that she "temporarily resided in a hotel [in State 2] for three months." Tr. at 47.

[4] The Individual stated that first occupied a hotel room for approximately one month upon her arrival in State 3. Tr. at 47–48. She then occupied a rental condominium through April 2016. Tr. at 48.

[5] The aforementioned codes pertain to "False, Fictitious or Fraudulent Claim" and "Public Money, Property, Records[,]" respectively. Ex. 4 at 4.

[6] Counsel for the Individual submitted a brief and Exhibits A through F. The brief was marked Exhibit A and the subsequent exhibits were renumbered B through G.

Under Guideline E, "[c]onduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying concern is

> [c]redible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Id. at ¶ 16(c).

Under Guideline E, the LSO alleged that OIG report determined that, from July 2015 to February 2016, the Individual "signed, certified, and submitted false multiple expense vouchers for travel" and "per diem as a subcontractor . . . while claiming permanent residence and duplicate expenses from [State 1 to State 3]." Ex. 1 at 1. The LSO also alleged that the OIG report indicated that the Individual admitted in March 2016 "that she falsely claimed permanent residence at her former marital home . . . in [State 1], while on temporary duty travel (TDY), in order to receive duplicate expenses and qualify for per diem she was not entitled to." *Id.* The LSO's invocation of Guideline E is justified.

Guideline F

Guideline F provides that "[a]ffluence that cannot be explained by known sources of income is also a security concern insofar as it may also result from criminal activity[.]" Adjudicative Guidelines at ¶ 18. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is "[u]nexplained affluence . . . that are inconsistent with known legal sources of income[.]" *Id.* at ¶ 19(g).

Regarding Guideline F, the LSO realleged all of the above allegations, and also indicated that the OIG report stated that the Individual "fraudulently received a total of $48,787.96" by the contractor after "submitting multiple false vouchers for payment." Ex. 1 at 2. The LSO's invocation of Guideline F is justified.

Guideline J

Guideline J states that "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness" and that, "[b]y its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under Guideline J include "[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]" *Id.* at ¶ 31(b).

Regarding the Guideline J concerns, the LSO realleged all of the aforementioned allegations made under Guidelines E and F. *Id.* at 2. The LSO's invocation of Guideline J is justified.

III. Regulatory Standards

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

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

In July 2015, the Individual began employment with a second-line subcontractor in State 3. Ex. 4 at 4; Ex. G at 26. The OIG report states that at the time the Individual was employed with the second-line subcontractor, she had indicated to the second-line subcontractor that her permanent residence was the former marital home in State 1.[7] Ex. 4 at 4; Ex. G at 1. Based on the residential address provided, the Individual met "the eligibility requirements for non-local [TDY] employees." Ex. 4 at 4. Per the OIG report, the second-line subcontractor certified the Individual's residential information to the DOE contractor through the first-line subcontractor. *Id*. The OIG report also states that the Individual would submit "signed expense vouchers and timesheets" to the DOE contractor by email, who would then email those same items to points of contact with the first-line and second-line subcontractors.[8] *Id.* at 5. The first-line subcontractor would then be

[7] In her April 2015 application for employment with this employer, the Individual listed the second address in State 1 as her residential address. Ex. G at 12, 17.

[8] The Individual submitted copies of the expense vouchers she signed and provided to her employer. Ex. E at 1–33. The forms indicate that when the employee signs his or her name, that person "[c]ertif[ies] this [document] to be a true statement of expenses incurred on authorized company business[]" and that "[r]eceipts are attached as required." *Id.* These documents do not list the Individual's residential address. *Id.* Further, there were no receipts attached to any of the expense vouchers. Tr. at 29. However, the Individual also submitted airplane tickets and a travel itinerary indicating that she traveled from State 3 to State 1 in February 2016. Ex. E at 40–49, 51–56. The Individual also

responsible for "submit[ting] invoices for [the Individual's] labor and per diem to [the DOE contractor] for payment." *Id.*

In December 2015, the Individual's former spouse contacted the OIG Hotline to disclose his belief that the Individual was claiming their former marital home in State 1 as her residence "to qualify for travel expenses and per diem."[9] *Id.* at 4; Tr. at 54–55. The OIG report indicated that after the Individual's former spouse provided the Individual's paystubs, which listed the former marital home address, the Individual's former spouse asserted that the Individual had left the former marital home in State 1 in July 2014[10] and that he was awarded the home following their divorce pursuant to an April 2015 court order. Ex. 4 at 4; Tr. at 19–20, 44, 55–56. The OIG report indicates that following the receipt of this information, the second-line subcontractor "requested documentation from [the Individual]"[11] and following an examination of said documents, the second-line subcontractor "determined [that the Individual] was not eligible to receive per diem and notified her" in December 2015 "that she would no longer be reimbursed for those expenses."[12] Ex. 4 at 5. Per the OIG report, the Individual then provided her mother's residence in State 4 as her mailing address, and she did not notify the first-line subcontractor of the second-line subcontractor's determination that she did not qualify for the aforementioned expenses. *Id*. The Individual "continued to submit expense vouchers until she resigned from her [position with the second-line subcontractor] in February 2016[.]" *Id*. The Individual received approximately $17,826.34. *Id*.

The Individual resigned from her position with the second-line subcontractor and took employment with the DOE contractor in February 2016. *Id.* at 4; Ex. G at 6–7, 9–10. The OIG report indicates that at this time, the Individual "signed relocation paperwork with [the DOE contractor] that listed her permanent residential address as" the second address in State 1, "allowing her to receive relocation expenses." Ex. 4 at 4, 6. However, the Individual directed the

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provided copies of the timesheets she submitted to the second-line contractor, dated July 2015 through February 2016. *Id.*; Ex. D.

[9] Regarding this fact, the Individual testified that her former spouse was controlling and abusive, and that he had told her he was going to "bring [her] down and destroy [her.]" Tr. at 55, 86–89.

[10] Per the QNSP and testimony, from August 2014 to April 2015, the Individual occupied a rental property in State 1. Ex. 5 at 24–25; Tr. at 20, 46. She terminated that lease early to pursue employment in State 2. Tr. at 46.

[11] In her testimony, the Individual denied that the second-line subcontractor made any such request. Tr. at 66.

[12] The Individual confirmed in her testimony that she had been notified that she was ineligible for per diem, but that she continued to be asked for said documents. Tr. at 67–69. The OIG report also states that the DOE contractor "notified [the first-line subcontractor] via email in January 2016 [that] there were concerns regarding [the Individual's eligibility] for travel and per diem payments." Ex. 4 at 5. The DOE contractor informed both subcontractors that the Individual "could continue to receive reimbursement for her expenses until a final determination could be made regarding her TDY status." *Id*. However, "no final determination was made by [the DOE contractor]." *Id*. A copy of January 2016 email submitted into the record by the Individual indicates that "there [were] concerns regarding [whether the Individual was] eligible for Travel/Per Diem" reimbursement. Ex. E at 37, 54. A January 2015 email indicates that the Individual could continue seeking reimbursement for her per diem costs "pending the final determination[,]" and a February 2016 email states that the first-line subcontractor had "not yet paid [the Individual] on any past (backlogged) per diem that was withheld." *Id.* at 35–36, 52–53. The OIG report indicates that she reached out to the second-line subcontractor and offered to rent an apartment in State 1 to continue receiving these benefits, but the Individual testified that she could not remember making such an offer. Tr. at 70–80; Ex. 4 at 4.

moving company to report to a different address, one that belonged to a storage facility. *Id.* at 6. The OIG report indicates that the moving expenses cost approximately $30,961.62, which were satisfied by the DOE contractor. *Id*. When asked about whether she had listed the second address in State 1 in her relocation paperwork, the Individual testified that she could not recall, but conceded only she could have been the source of that information and that she had kept some of her belongings in a storage unit. Tr. at 63–64, 75–76. She denied knowing the address of the storage facility, and stated that during the period at issue, her "life was all over the place, and [she] was doing what [she] could each day to make decisions [that she] needed to live[.]" *Id*. at 64, 75–76. She also conceded that she was living in State 3 at the time she submitted the relocation paperwork and received the benefit. *Id*. at 64–65. She testified that she could not recall why she gave the address of a storage facility. *Id*. at 76.

The OIG report indicates that when the Individual was confronted by the OIG investigator, she admitted that she had left the former marital home in 2014, that she had left State 1 in 2015 to pursue employment in State 2, and that she had been notified by the second-line subcontractor in December 2015 that she was not eligible for per diem payments. Ex. 4 at 7. The OIG report made several recommendations, including a referral of "the matter to [the LSO] for further evaluation of [the Individual's] clearance status." *Id.*

In her testimony, the Individual indicated that during the time in question, she felt that her mother's address in State 4 was really her permanent residence, as she had proceeded to her mother's home following her departure from State 1, and further, this home was left to her and her mother following her father's passing.[13] Tr. at 20–21, 27, 51–52, 61, 97–99. She also felt her mother's home was her permanent residence because she had experienced temporary living arrangements after leaving State 1 to seek employment in States 2 and 3, and although she lived in a different location, she had personal belongings in State 4. *Id.* at 20–23, 27, 46–47, 51–52, 61, 77–78, 89. In later testimony, the Individual admitted that she had not resided in her mother's home in State 4 at any time after July 2014, and that she was not responsible for any of the bills in the household, but that she would send money to her mother. *Id*. at 52, 72–73, 92. In her testimony, she stated that had her employer "followed her instructions" and used her mother's address, her paystubs would not have been sent to her former marital home. *Id.* at 56–57. However, she also conceded that the second-line subcontractor "could only have gotten" her former marital home address from her. *Id*. at 58–59. She explained that when she was first hired, she "did not know how or what" she needed to complete on her employment forms and recalled that although she had provided her mother's address to the person assisting her with the forms, that person also inspected her driver's license, which listed her former marital home as her address. *Id*. at 59–61, 66–67, 90.

[13] The Individual did not list her mother's address as a residence in her QNSP, because, as she testified, she was not physically located in that home at the time. Ex. 5; Tr. at 99–101. She did, however, consider her mother's home a "permanent" address. Tr. at 99–101. In support of this assertion, the Individual submitted two envelopes into the record from August 2015, indicating that the second-line contractor listed her address as the former marital home in State 1, but that the United States Postal Service forwarded the mail to her mother's address in State 4. Ex. G at 22. The 2016 wage and tax statement submitted by the Individual into the record indicates that she listed her mother's residence in State 4 as her address. *Id.* at 2. However, a January 2016 offer of employment letter from the DOE contractor lists the Individual's address as an address in State 1. *Id.* at 6, 9. The Individual also submitted paperwork indicating that she had rented a home in State 3 from July 2015 to April 2016, and she listed her mother's residence in State 4 as her billing address on said paperwork. Ex. F at 21–44. The Individual did not do any "contracting for the [DOE] in [State 4]." Tr. at 27.

The Individual testified at the hearing that she disagreed with the allegations in the SSC because, although her former spouse remained in the former marital home pursuant to their settlement agreement, he did not comply with the terms of the settlement in that he did not "immediately put the home in his name[,]" resulting in him being held "in contempt of court[,]" and she further stated that "he did not want to make several of the [mortgage] payments on [the] home." *Id*. at 23–24, 45–46, 49–50. The Individual stated that her name was still on the deed and mortgage, and she remained responsible should her former spouse fail to satisfy his ongoing mortgage obligations, even though she admitted that she never made a mortgage payment or paid a bill after she left the home. *Id*. at 26, 50–51. She indicated that she felt the OIG investigator had already formulated conclusions prior to the interview, and as a result, was "rough with the way she would ask [the Individual] questions" and simply failed to listen to her. *Id*. at 24–26. She testified that she does not remember telling the OIG investigator that she was still responsible for the mortgage of her former marital home. *Id*. at 77.

The Individual testified that at the time she sought employment in State 2, she had never been employed as a contractor, and as a result, she "had no clue what [she] was doing." *Id*. at 28, 40. Accordingly, she "had to rely and depend on others to direct [her] and lead [her] in the way that policy and procedure should be." *Id*. at 28, 96. She also denied being given a written copy or told of the procedures or policies for claiming reimbursement for expenses and stated that she still experiences confusion regarding the matter. *Id*. at 28, 35, 53, 55, 70–71, 91–92. She only found herself responsible for completing the requisite forms and returning them to the appropriate person. *Id*. at 28, 35–36. When asked whether she sought some explanation of protocol and policy for filing such vouchers during the period in question, she testified that she "did not ask because it was not in question[]" and that she "[did not] know to question it." *Id*. at 96. The Individual stated that she "thought [she] was doing everything right by how [she] was being led[]" by others. *Id*. at 96–97.

Regarding her financial history, she stated that there was debt in the marriage, and she took her share of it upon divorce. *Id*. at 34. Further, although she stated that she never felt "overwhelmed with . . . debt," she did suffer a period of unemployment for three to four months but did have money in savings that she used to cover expenses and received unemployment benefits. *Id*. at 34–35, 39. She further indicated that her living expenses were "normal" and that she has never needed to commit fraud, specifically denying any intent to defraud the government. *Id*. at 37–39. The Individual also denied any restitution requests or further communication from prosecutors or special agents. *Id*. at 37.

V. Analysis

It is ultimately the Individual's burden to mitigate the concerns stated in the SSC, and I am unconvinced that her behavior was unintentional, despite any assertions to the contrary. The information before me indicates, among other things, that at various points in time, the Individual listed her address on various documents in a manner inconsistent with what she reported in her 2018 QNSP. Based on her testimony, she understood what constituted a residential address in the context of the QNSP, but in the context of receiving per diem funds, the concept of a residential address seemed to be less clear to her. *Id.* at 99–101. Additionally, some of the evidence the

Individual submitted seems inconsistent with her testimony. For example, the Individual testified that she considered her mother's address in State 4 to be her permanent residence throughout the period at issue. However, she also submitted copies of plane tickets and a travel itinerary indicating she was flying from State 3 to State 1 in February 2016, ostensibly to illustrate that she was a resident of State 1. While the Individual stated that the conclusions in the OIG report were incorrect because her former spouse failed to assume full responsibility of the home pursuant to their agreement, and thus extending her responsibility regarding the home, this logic fails to take into consideration that the purpose of receiving such funds is to cover the extra costs associated with employment when one's residence is located elsewhere. She did not incur such costs because she was not traveling to and from or maintaining the former marital home at the time, as she was living in State 3.

The Individual's testimony is rife with statements indicating that she considered her mother's address to be her residential address during the period in question. This information does nothing to mitigate the stated concerns before me. The only relevant portion of this testimony pertains to whether this address was provided to the second-line employer at the start of her employment, as she claims. Specifically, she seemingly provided this testimony to evade any responsibility as it pertains to the question of why the second-line subcontractor had her former marital home as her residential address. She testified that although she had provided her mother's address to the person who was assisting her with the employment documents, she also let him inspect her driver's license, which she claims bore the address of her former marital home. *Id.* at 59–61. Although she testified that she "[could not] allude that [the former marital home] was the address that he put down[,]" she was doing just that and placing the fault with a person who was not made available for examination. I remain unconvinced by this version of events, especially when in an April 2015 application for permanent employment with the DOE contractor, she provided the second address in State 1 as her residential address and her mother's address is conspicuously missing from the 2018 QNSP. Ex. G at 11–15. The aforementioned facts, taken with the fact that the Individual was notified by the second-line subcontractor that she was not eligible for such reimbursement in December 2015, but continued claiming reimbursement until February 2016 regardless, strongly indicates the Individual's behavior was intentional. Lastly and importantly, the OIG report indicates that once confronted by the investigator, the Individual "eventually admitted [that] she did not have duplicate expenses in [State 1] even though she received reimbursement for living costs and per diem." Ex. 4 at 7

Further, regarding the matter of moving expenses, the Individual did not present any testimony or evidence to refute the fact that she had been living in State 3 for approximately seven months at the time she requested relocation funds, provided a former address in State 1 in her relocation paperwork, and proceeded to give an entirely different address to the moving company. She stated that she simply could not remember the address she provided to the second-line contractor and to the moving company. While I understand that her life was in tumult at the time, I cannot make a determination that the concern has been successfully mitigated because she could not remember. The fact remains that the Individual was the only source of information to the second-line contractor and the moving company, and no other person could have provided those addresses. I have no compelling reason to deviate from the conclusion that she intentionally provided a residential address in State 1 to receive relocation expenses, and that she instructed the moving company to retrieve the items she had kept in a storage unit.

I remain incredulous that the Individual signed forms to receive funds for alleged expenses without first seeking any information regarding the correct manner in which to complete such a form, so that she may ensure that the information she provided was accurate. The Individual indicated that she relied on others employed with the second-line subcontractor to make decisions regarding whether she was appropriately seeking these funds. At best, this was an act of willful ignorance, especially because she was certifying that the information she was submitting was accurate. Ex. E at 67–81. Finally, while I can understand that the information that led to the OIG investigation could have come from a source hostile to the Individual, this does not negate the fact that OIG conducted an investigation and what resulted was a report indicating that the Individual had actively engaged in the alleged behavior.

a. Guideline E

The Adjudicative Guidelines provide that 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.

The allegations contained in the SSC pertain to conclusions reached following an investigation and do not pertain to any information that was omitted, concealed, or falsified during the clearance process. At any rate, I do not have any information before me indicating that the Individual disclosed any omitted, falsified, or concealed information prior to being confronted with it or that the alleged behavior was the result of receiving advice from an attorney or similar professional. Accordingly, the mitigating factors at (a) and (b) are not applicable in this case.

When considering the Individual improperly benefitted in an amount over $48,000, I cannot conclude that the behavior was minor. Further, as the Individual repeatedly filed false information in forms over the span of approximately seven months during the course of her regular employment, I cannot conclude that that the behavior was infrequent or occurred under unique circumstances. These events took place less than ten years ago, which is not so far removed in the past considering the fact that the Individual refuses to accept responsibility for her actions means that her judgement and reliability remain impaired, and accordingly, the lack of any personal development strongly suggests that this sort of behavior may recur. Accordingly, the Individual has not satisfied the mitigating condition at (c).

The record is bereft of any indication that the Individual has acknowledged her behavior and sought counseling or taken any steps to alleviate the factors that resulted in her inappropriate behavior. Accordingly, the mitigating factor at (d) is not applicable.

The mitigating factor at (e) is not relevant in this matter, as the LSO did not allege that the Individual engaged in conduct that made her susceptible to manipulation, exploitation, or duress. I also cannot conclude that the information that resulted in the security concerns came from an unsubstantiated source or one of questionable reliability, as the concerns were the result of an OIG investigation, and accordingly, the mitigating factor at (f) does not apply. Lastly, as there is no allegation before me that indicates the Individual was associated with persons involved in criminal activities, the mitigating factor at (g) is not applicable.

b. Guideline F

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline F include:

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 (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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.

On balance, for the following reasons and the reasons stated above, the evidence strongly indicates that the Individual knowingly received per diem costs and moving expenses to which she was not entitled, and that she received these funds through misrepresentations made to her employer to gain a financial benefit.

As previously stated, I cannot conclude that this behavior was infrequent and occurred under unique circumstances. Further, as stated above, considering the Individual persists in denying any wrongdoing after receiving the ill-gotten financial windfall leads me to the conclusion that her the lack of judgment and untrustworthiness persists to this day. Accordingly, regardless of when the Individual discontinued employment with the second-line subcontractor, the behavior was not so long ago. The Individual has not mitigated the stated concerns pursuant to mitigating factor (a).

Although the Individual testified to the financial difficulties she experienced, she did not put forth any evidence indicating that they were beyond her control or that she acted responsibly despite them. The Individual also denied receiving any financial counseling. The factors at (b) and (c) do not apply to this case.

In terms of whether the income came from a legal source, on balance, the evidence indicates that the $48,787.96 the Individual received was very likely obtained in the manner indicated in the OIG report, in that the Individual inappropriately claimed permanent residence and duplicate expenses in State 1 and inappropriately requested relocation expenses. Accordingly, I cannot conclude that the Individual mitigated the stated concerns pursuant to mitigating factor (f).

As the LSO did not allege that the Individual had any past due debt or tax obligation, the mitigating factors at (d), (e), and (g) are not applicable.

c. Guideline J

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.

To begin, there is no need to have any evidence of arrests, charges, or prosecutions for concerns to be raised under Guideline J. I have before me an OIG report that concluded that the Individual fraudulently collected approximately $48,000 in funds to which she was not entitled. The report also contained an admission from the Individual. Although the Individual submitted ample evidence, the main thrust of the entirety of the evidence she presented was that her behavior was unintentional, and therefore, not criminal and dishonest. But for all the reasons stated previously, the evidence strongly indicates that the Individual knew she was not entitled to the money, but continued to claim the funds even after she was told she was not entitled to the money.

As stated above, the Individual benefitted in an amount exceeding $48,000 through her behavior and she repeatedly filed for reimbursement over the course of seven months during the time she was employed with the second-line contractor. The alleged actions, for which the Individual has not taken any responsibility or paid any restitution, took place less than ten years ago. Again, as indicated above, because the Individual continues to deny responsibility and because the behavior took place in the context of her routine employment, I cannot conclude that the criminal behavior occurred so long ago or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the Individual's trustworthiness, reliability, or good judgment pursuant to mitigating factor (a). As I have no information before me suggesting that the Individual was coerced or pressured into claiming these funds, the mitigating factor at (b) is not applicable in this case.

While the Individual denied that her conduct was intentional and she frequently stated that she could not remember the facts and circumstances surrounding many details regarding the matter, I cannot conclude that there is no reliable evidence to support the determination that the Individual committed the stated offenses. As an initial matter, the Individual admitted in her testimony that her employer had the wrong residential address for the term of her employment, and it is undisputed that she repeatedly filed the necessary documents to receive reimbursement for the

alleged expenses. Importantly, the OIG conducted an investigation and issued a report indicating that the Individual had "signed, certified, and submitted multiple expense vouchers for travel and approximately seven months of per diem as a subcontractor while claiming permanent residence and duplicate expenses in [State 1]." Ex. 4 at 3. The OIG also concluded that the Individual "request[ed] relocation expenses from [State 1] to [State 3,]" resulting in the Individual "being paid [approximately] $48,787.96." *Id.* I find it highly implausible that the Individual took these actions without knowledge that they were unauthorized, and if she did her recklessness in claiming tens of thousands of dollars without basic knowledge of the requirements for claiming these sums cast substantial doubt on her judgment and reliability. Therefore, I cannot conclude that the Individual mitigated the stated concerns pursuant to the mitigating factor at (c).

I also cannot conclude that the mitigating factor at (d) is applicable in this case. Successful rehabilitation requires a person to take ownership of his or her conduct. Again, the Individual consistently blamed her actions on other individuals. There is no evidence before me that indicates the Individual has paid restitution, that she has committed herself to community involvement, or that she has endeavored upon any higher education. Further, I do not have any evidence of good work performance.

VI. Conclusion

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

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals