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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: August 15, 2023)	Case No.: PSH-23-0120
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_____)	

Issued: October 26, 2023

Administrative Judge Decision

Janet R. H. Fishman, 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

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In September of 2022, the Individual completed a Questionnaire for National Security Positions (QNSP) which contained numerous omissions and falsifications. Exhibit (Ex.) 1 at 1–2. Further, when asked about the omissions and falsifications in a Triggered Enhanced Subject Interview (February 1 TESI) with an Office of Personnel Management (OPM) investigator on February 1, 2023, the Individual denied the underlying facts. Ex. 1 at 2. The Individual underwent a second TESI on February 27, 2023 (February 27 TESI), during which he corrected some of the previously falsely reported information. *Id.* at 1–2. In addition to the omissions and falsifications, the Local Security Office (LSO) found other derogatory information, which led it to refer the Individual for a psychological assessment. *Id.* at 2–3.

On May 8, 2023, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological assessment. Ex. 5 at 22. On May 19, 2023, the DOE Psychologist issued the results

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.

of the psychological assessment (Report) in which she opined that the Individual had demonstrated repeated problematic behaviors consistent with poor judgment, emotional instability and impulsivity, and lack of trustworthiness. *Id.* at 27. She continued that his “constellation of personality traits is a mental/personality condition with impairs judgment, stability, reliability, and trustworthiness.” *Id.*

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline I (Psychological Conditions), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 hearing. The LSO submitted nine exhibits (Exs. 1–9). The Individual submitted six exhibits (Exs. A–F). The Individual testified on his own behalf and offered the testimony of his mother and a friend. Hearing Transcript (Tr.) at 13, 28, 41. The LSO offered the testimony of the DOE Psychologist. *Id.* at 108.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1. Guideline E indicates that:

Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15.

The SSC cited the Individual’s failure to list his September 2019 charge for embezzlement on his QNSP and his denial of any knowledge of the charge or the underlying conduct during the February 1 TESI. Ex. 1 at 5–6. The Individual was accused of stealing items from his employer the value of which was more than \$100 but less than \$250. Ex. 8 at 157. The theft was charged as embezzlement. *Id.* During the February 27 TESI, the Individual acknowledged stealing the items but claimed his supervisor “told [the Individual] that [the Individual] could take the [items] as long as no one saw [the Individual] take the [items].” *Id.* The LSO also cited the Individual’s failure to list three employments on his QNSP and his falsification of the reason he left a fourth employment. Ex. 1 at 5-6. Finally, in regard to the Guideline E concern, the LSO relied on the Individual’s denial that a court had ordered him to consult with a mental health professional, even though the background investigation showed that a municipal court had directed him to complete a Behavioral Health Assessment, Ex. 8 at 182, and the Individual’s claim that he received an Associate Degree, when there was no record that he had. Ex. 1 at 6. The LSO’s allegation that the Individual omitted,

concealed, and falsified relevant facts from the QNSP and during the background investigation conducted as part of the adjudicative process justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a).

The LSO cited Guideline I of the Adjudicative Guidelines as the second basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 7. "Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline." Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist's opinion that the Individual demonstrated repeated problematic behaviors over several years consistent with poor judgment, emotional instability and impulsivity, and lack of trustworthiness. Ex. 1 at 7. The LSO's citation to the opinion of the DOE Psychologist that the Individual has a mental and/or personality condition which impairs his judgment, stability, reliability, or trustworthiness justifies the LSO's invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

The LSO cited Guideline J of the Adjudicative Guidelines as the third basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 7. "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. The SSC cited the Individual's arrest and charge for two felony counts of aggravated assault with a deadly weapon after a road rage incident in March 2020 and a September 2019 charge for embezzlement. Ex. 1 at 7. The LSO's reliance on the Individual's two charges justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

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 Dep't 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).

An 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). An 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.

IV. FINDINGS OF FACT AND HEARING TESTIMONY

A. Findings of Fact

As stated above, in September of 2022, the Individual completed a QNSP which contained numerous omissions and falsifications. Ex. 1 at 5–6. The omissions from the QNSP include: (1) a September 27, 2019, charge for embezzlement; (2) a December 2018 to November 2019 employment with a local municipality; (3) a February 2018 to October 2018 employment; (4) a November 2017 to December 2017 employment; and (5) a June 17, 2020, order from a court that he undergo a Behavioral Health Assessment and Anger/Conflict Management. *Id.* The first falsification on the QNSP was that he resigned from one employment to begin another job, when in fact, he was terminated from the first employment. *Id.* at 6. The second falsification was that the Individual stated on the QNSP that he obtained an Associate Degree in November 1997, when no record existed of such a degree for him. *Id.*

In addition to the inaccuracies on the QNSP, at the February 1 TESI, the Individual denied having any knowledge of the 2019 embezzlement charge but confessed at the February 27 TESI that he just did not want to admit to the underlying behavior because he was not proud of what he had done. *Id.* at 1. At an Enhanced Subject Interview on December 6, 2022 (December 6 ESI), the Individual claimed that he failed to disclose one of his employments due to an oversight. *Id.* at 1–2. However, he did not correct this omission until the second TESI held on February 27, when he claimed that he was given the option to resign from this employment in lieu of being terminated. *Id.* at 2.

On the QNSP, the Individual failed to disclose an employment that ran from February 2018 to October 2018, but at the December 6 ESI, he claimed that was an oversight and he left that employment because he was “burnt out” from the work. *Id.* The background investigation reflects that he was terminated for failure to adhere to company standards. *Id.*; Ex. 8 at 153, 171. For another employment, which he reported on the QNSP, the Individual claimed that he resigned to accept another position. Ex. 1 at 6. Again, background investigation uncovered that he was terminated for failing to follow company policy. *Id.* The Individual failed to disclose an employment that lasted for one month. *Id.* Further, the Individual failed to divulge on the QNSP that he had been ordered by a municipal court to consult with a mental health professional, even though a court ordered him to undergo a Behavioral Health Assessment and Anger/Conflict Management *Id.*; Ex. 8 at 182.

The Individual failed to report on the QNSP that he was required by a municipal court as part of the sentencing for his felony aggravated assault charge to attend anger management. Ex. 1 at 6. About the claim that he had an Associate Degree, the Individual submitted a certificate from the training institute he attended, which stated it was an “Associate of Occupational Studies Degree.” Ex. F.

As stated above, the LSO asked the DOE Psychologist to evaluate the Individual. Ex. 1 at 7. The DOE Psychologist reviewed the Individual’s Personnel Security File (PSF), conducted a three-and-a-quarter-hour interview with the Individual, and administered to the Individual the Minnesota Multiphasic Personality Inventory-3 (MMPI-3). Ex. 5 at 23. She opined in her Report that:

[a] number of [the Individual]’s behaviors and traits are concerning, as his willingness to be deceitful if he believes it benefits him, his impulsive and unlawful behaviors, poor judgments, and blaming others for his difficulties. Perhaps of most concern, however, is the recency of [his] dishonest reports including during this evaluation, and his omissions in previous reports of information that would have contained derogatory information. He cannot be considered a reliable historian.

Id. at 27. The DOE Psychologist concluded that the Individual had “demonstrated repeated problematic behaviors over several years consistent with poor judgment, emotional instability and impulsivity, and lack of trustworthiness.” *Id.* at 27. She expressed concern that the Individual’s “version of events” were “at odds with how they have been described by others,” and “[s]ome of his versions have varied from interview to interview.” *Id.* at 26. The DOE Psychologist continued that “[t]his constellation of personality traits is a mental/personality condition which impairs judgment, stability, reliability, and trustworthiness.” *Id.* The DOE Psychologist also noted that a prognosis for a person with the issues she described is poor. *Id.* at 27. She concluded that, if the Individual entered individual counseling “with a therapist with whom he could be honest about himself, and who is knowledgeable and experienced with behavioral problems such as his, his prognosis could be fair to good with six to [twelve] months of weekly individual therapy sessions.” *Id.*

Regarding the Individual’s charge for two felony counts of aggravated assault with a deadly weapon, on March 8, 2020, the Individual was arrested and reportedly brandishing a gun during a road rage incident. Ex. 1 at 7. The Individual completed the requirements of his plea agreement, which included community service and an anger management course. Ex. A (showing his completed community service); Ex. C (demonstrating he completed the anger management course); Ex. 9 (outlining the criminal charge detail and that all obligations were met); Ex. D (showing that the Individual met all obligations required by the court).

About the 2019 embezzlement charge which involved stealing items from a previous employer, the Individual claimed that he had permission from a supervisor to take the items as long as he was not seen removing the items. Ex. 1 at 5; Ex. 8 at 157. As a result of this charge, the Individual was sentenced to community service, and he provided evidence that he completed his required community service requirement. Ex. B (demonstrating he completed his community service).

B. Hearing Testimony

The Individual’s mother and his friend testified at the hearing. The friend worked with the Individual at a previous employer and in his current employment. Tr. at 14–15. He stated that they talk once or twice a month, but he had no knowledgeable about the incidents listed in the SSC, including the Individual’s other employments. *Id.* at 19–21, 22–23. The friend claimed that the Individual has never displayed a temper at work and they “were always laughing.” *Id.* at 21. He stated that the Individual is honest and reliable. *Id.* at 21, 24.

The mother testified that they have lived together for the last two years. *Id.* at 30. She stated that she was aware of the road rage incident because he called her and asked to take care of his children

at the time he was arrested. *Id.* at 31. She asserted that the criminal charges were dismissed, and that the Individual had to complete anger management training. *Id.* at 32. His mother claimed that the Individual only worked for the previous employer, where he was alleged to have engaged in embezzlement, for a short time, and he resigned from that employment “because he was trying to get better pay.” *Id.* at 33. His mother testified that he had a calm demeanor with no anger issues. *Id.* at 34–35. She declared that he is honest with her. *Id.* at 38.

To explain the omissions and falsifications, the Individual asserted that he was confused by the timelines and embarrassed. *Id.* at 85, 100. He disputed that he was terminated for cause. *Id.* at 85, 88, 90–91. He claimed that he was “laid off” from one employment rather than terminated, although he told the OPM investigator that he was “burnt out.” *Id.* at 85; Ex. 8 at 153. For another employment, he claimed that he resigned because he found other employment, but that when he informed them of his new employment, they told him to “pretty much get my stuff and get out.” Tr. at 90. The Individual testified that he did not list one of the employments because he “didn't think working a month there would be significant amount of time to list them.” *Id.* at 93. He claimed that, although he listed the aggravated assault charge on his QNSP, he did not report the 2019 embezzlement charge because “the [assault] one was more . . . of a harsher charge” and he was embarrassed by the 2019 embezzlement charge. *Id.* at 83. He averred that he could not answer why he would have reported the more serious charge. *Id.*

Regarding the road rage incident, the Individual testified that he honked his car horn at a car that was blocking the road, after which, the car tailgated his vehicle. Tr. at 70. The Individual claimed that he exited the vehicle to talk to the inhabitants in the car, and the other car “almost tried to hit [him]” *Id.* He asserted that he probably had his hand up but was not “flipping the bird.” *Id.* at 71. The Individual did admit that his actions may have escalated the events. *Id.* at 72. He stated that the next day, the police knocked on his front door and arrested him, claiming that it had been reported that he brandished a gun. *Id.* at 72–73. The Individual claimed that he did not have his handgun in the car at the time of the road rage incident. *Id.* at 103. Although the police report stated that the gun was found in the front door of his car on the day of his arrest, the Individual claimed that the gun was in his gun safe. *Id.* at 104. When initially asked about gun ownership at the hearing, the Individual claimed he possessed rifles. *Id.* at 102. He finally admitted that at the time of the road rage incident, he did own a handgun. *Id.* The Individual admitted that he ultimately pled guilty to a misdemeanor. *Id.* at 75. He asserted that requirements of his plea agreement were to complete community service and attend anger management. *Id.* Although the background investigation indicated that the Individual was required to undergo a Behavioral Health Assessment and Anger/Conflict Management, Ex. 1 at 6, the Individual stated that the only mental health treatment he received was a group session that consisted of four one-hour meetings. Tr. at 94. He claimed that he did not include it on his QNSP because he thought it was all related to the road rage incident and subsequent charges. *Id.*

In reference to the embezzlement charge, the Individual claimed that his supervisor at the time authorized him to take the items he was later accused of stealing; however, he admitted the supervisor said, “as long as [he] didn't get caught” taking the items. *Id.* at 42. An unspecified while later, the Individual and supervisor had a disagreement, during which the Individual claimed that the supervisor “lunged at [him] with a closed fist,” which he perceived as a threat. *Id.* Thereafter, the Individual reported the perceived threat to his union and employer as a hostile work

environment. *Id.* at 43. The Individual claimed that after the hostile work environment report, the supervisor reported the Individual for stealing the items. *Id.* He stated that, on the advice of the union, he resigned from the position. *Id.* at 44. The Individual claimed that he did not know about the embezzlement charge until he went to court for the aggravated assault with a deadly weapon. *Id.* at 48. He testified that he was eventually sentenced to community service, which he completed. *Id.* at 49; Ex. B (showing his completed community service).

At the hearing, the DOE Psychologist confirmed her opinion that the Individual has a “personality or mental condition that impairs his judgment, stability, reliability, and trustworthiness.” Tr. at 110. She explained at the hearing that “the entire picture just has too many inconsistencies, too many statements by [the Individual] that are . . . self-serving or minimizing of his responsibilities.” Tr. at 114–15. She highlighted the Individual’s inconsistent statements regarding his gun ownership, where he claimed that he only owned rifles, but then clarified that he owned a handgun during the road rage incident, but it was taken by the police and never returned. *Id.* In addition, the DOE Psychologist emphasized that the Individual’s own testimony shows he knew stealing the items which led to the embezzlement charge was, “if not unlawful, at least questionable.” *Id.* at 113. She also opined that omitting some employers from his QNSP was purposeful because they “could be in a position to say something negative about him.” *Id.* a 116. She believed that the Individual did not report the embezzlement charge on his QNSP, but did include the more serious road rage incident, because the embezzlement reflected on his behavior as an employee. *Id.*

The DOE Psychologist continued that while that the anger management class was helpful to the Individual, his attendance at that class did not change her diagnosis. *Id.* at 115–16. She opined that it would “behoove [the Individual] to get some counseling around the area of being able to be honest, even when it is not necessarily in his best interest.” *Id.* at 111.

V. ANALYSIS

A. Guideline E

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.

Adjudicative Guidelines at ¶ 17.

The Individual omitted numerous items from his QNSP, including: (1) a September 27, 2019, charge for embezzlement; (2) a December 2018 to November 2019 employment with a local municipality; (3) a February 2018 to October 2018 employment; (4) a November 2017 to December 2017 employment; and (5) a June 17, 2020, order from a court that he undergo a Behavioral Health Assessment and Anger/Conflict Management. He also falsified information regarding why he departed one employment for another, concealing the fact that he was terminated from the first employment.² The Individual did not come forward with this information before it was discovered by DOE, and even then, denied the information during the initial ESI and the follow-up TESI. At the hearing, the Individual continued to maintain that he confused timelines or did not think a one-month employment needed to be reported. The Individual did, finally, admit that he knew taking the items from his employer, which led to the embezzlement charge, was wrong. I find that the Individual did not make prompt, good faith efforts to correct his omissions and falsification and that the first mitigating condition is inapplicable. *Id.* at ¶ 17(a).

The Individual has not asserted that his conduct was influenced by the advice of legal counsel or other representative, and thus, the second mitigating condition is inapplicable. *Id.* at ¶ 17(b).

The Individual has acknowledged that he acted wrongly by omitting and falsifying the information; yet he is still denying the work terminations were for cause. Further, he has not asserted that the omissions and falsifications occurred under unique circumstances. Rather, he either disputed the underlying facts or stated that he did not disclose the information because he was embarrassed. I am not convinced that the Individual will be truthful in the future if he believes that he can conceal embarrassing information without detection. The fact that the Individual omitted information from his QNSP and was not truthful with the OPM investigator is not a minor matter. Further, only a year has passed since the Individual completed the QNSP, and the numerous falsifications and

² In the SSC, the LSO listed the Individual's claim that he obtained an Associate Degree in November 1997, although no such record existed, as support for the Guideline E concern. Ex. 1 at 6. The Individual submitted a copy of his certificate, which stated that he received an "Associate of Occupational Studies Degree." Ex. F. At the hearing, the Individual stated that because the certificate stated that it was an Associate Degree, he claimed it on his QNSP. Tr. at 96. It is certainly understandable how the Individual could have made that mistake, and for that reason I do not consider this alleged falsification in my analysis of the Guideline E concerns.

omissions show that the behavior was not infrequent. As such, I find that the third mitigating condition is inapplicable. *Id.* at ¶ 17(c).

While the Individual has acknowledged the behavior, he has not 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. Thus, I cannot find that such behavior is unlikely to recur. For these reasons, I find the fourth mitigating condition inapplicable. Adjudicative Guidelines at ¶ 17(d).

The fifth mitigating condition is inapplicable because the Individual has not taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. The Individual continues to deny that he was terminated from the employments for cause, although he admitted that he was charged with embezzlement, after confronted with the information. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the Individual does not deny that he omitted or falsified much of the information on the QNSP, and the LSO did not rely on sources of questionable reliability. *Id.* at ¶ 17(f). The final mitigating condition is inapplicable because the LSO did not allege that the Individual associated with persons engaged in criminal activity. *Id.* at ¶ 17(g).

Having concluded that the Individual has not met any of the mitigating conditions, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline I

Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and,
- (e) there is no indication of a current problem.

Id. at ¶ 29.

At the hearing, the DOE Psychologist stated that her opinion regarding the Individual's problematic behavior was not impacted by any hearing testimony. The first and second mitigating conditions are inapplicable because the Individual, while he offered to undergo counseling during the hearing, has no treatment plan and has not entered counseling. *Id.* at ¶ 29(a), (b). The DOE Psychologist opined that the Individual's problematic behavior regarding his failure to be truthful and honest continued even through his testimony at the hearing. She testified that while treatment would help him, the anger management class was insufficient as he needed six to twelve months of individual therapy. Individual therapy would increase his prognosis from poor to fair or good. Therefore, I cannot find that his diagnosed mental condition is under control or in remission, nor was it temporary. *Id.* ¶ 29(c), (d). As shown by the Individual's testimony at the hearing, his failure to take responsibility for his falsifications and omissions shows that his psychological condition, as outlined by the DOE Psychologist, is not temporary nor has it been resolved. Therefore, the fourth and fifth mitigating conditions have not been met. *Id.* at ¶ 29(a)–(d).

For the aforementioned reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

C. Guideline J

Conditions that could mitigate a security concern 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; or,
- (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.

Id. at ¶ 32.

The Individual has not shown that his two arrests occurred under such unusual circumstances that they are unlikely to recur. The Aggravated Assault charge resulted from a road rage incident that occurred in 2020. Three years' passage of time is not sufficient to mitigate this serious charge. Further, driving is a daily activity, not any type of unusual circumstance that might mitigate his behavior. The Individual's attendance at the anger management class does not convince me that he has mitigated the concern raised by the road rage incident. Even at the hearing, he continued to blame the incident on other people involved and did not express remorse. The Individual did admit that his behavior during the incident escalated the conflict. With regard to the embezzlement, the Individual expressed some remorse by stating that he stated that he knew it was wrong. But this

incident too occurred relatively recently, in 2019, and the Individual has not persuaded me that there were any unusual circumstances that prompted the criminal behavior. Thus, considering the two criminal incidents together, I find that the first mitigating condition has not been met. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because the Individual did not assert that he was pressured or coerced into committing any of the offenses cited by the LSO. *Id.* at ¶ 32(b). The third mitigating condition is inapplicable because the Individual does not deny that he committed the offenses cited by the LSO. *Id.* at ¶ 32(c).

The Individual completed all the requirements imposed by the court after his two criminal convictions and supplied evidence of that completion. But the Individual continued to attempt to excuse his behavior in both the road rage incident and embezzlement. With regard to the road rage incident, he claimed he had no gun with him, and regarding the embezzlement, he claimed he had permission to take the items from his employer by his supervisor, if he was not seen committing the act. For these reasons, I cannot find there is evidence of successful rehabilitation, and therefore the fourth mitigating condition has not been met. *Id.* at ¶ 32(d).

Having concluded that the Individual has not mitigated the security concerns under the factors set forth under Guideline J, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, I, and J of the Adjudicative Guidelines. After considering all 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 under Guidelines E, I, or J. 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.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals