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In the Matter of: Personnel Security Hearing )  
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Filing Date: September 15, 2023 ) Case No.: PSH-23-0138  
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Issued: January 26, 2024

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 restored.

**I. Background**

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in May 2017. Exhibit (Ex.) 9. In the QNSP, when asked about a police record in the past seven years, the Individual disclosed that in February 2017, he was arrested pursuant to a warrant issued for a Domestic Violence charge after the Individual and his former wife "had a big argument" and she "got mad and went to the police later without telling [him]." *Id.* at 30. The Individual disclosed that his former wife attempted to have the charge against him dismissed but was unsuccessful. *Id.* at 30–31. At the time of the QNSP, the matter was pending. *Id.* at 31. The Individual also disclosed that in March 2017, he was charged with "Driving While Suspended," and that the matter was pending. *Id.* at 32. The Individual did not provide any further information regarding any other criminal charges or arrests. The Individual was subsequently granted access authorization. Transcript of PSH-23-0138 (Tr.) at 12.

As part of routine procedure to maintain an access authorization, the Individual signed and submitted another QNSP in June 2022. Ex. 8. In this QNSP, the Individual disclosed that he failed to file his federal income taxes for tax year 2019, claiming that he "had no idea [he] did not file

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<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.

2019” income taxes, and “plan[ned] to file in the next 30 days.” Ex. 11 at 48; Ex. 8 at 37. In his 2022 QNSP, the Individual disclosed the same criminal charges that followed the argument he had with his former wife and explained that the criminal matter had been dismissed.<sup>2</sup> Ex. 11 at 41–42; Ex. 8 at 30–31. He also disclosed the Driving While Suspended charge and indicated that the “case [was] resolved.”<sup>3</sup> Ex. 11 at 42; Ex. 8 at 31. The Individual disclosed a March 2019 offense of “miscellaneous peace disturbance” and that although he could not “recall the nature of what happened,” he thinks he “received a ticket in the mail[,]” resolving the matter in August 2019. Ex. 11 at 43; Ex. 8 at 31–32. No other criminal charges or arrests were disclosed.

The Individual underwent an Enhanced Subject Interview (ESI) that was conducted by an investigator in August 2022. Ex. 11 at 62. A follow up contact was made the same month. *Id.* at 79–80. The Local Security Office (LSO) subsequently requested the Individual complete and sign two separate Letters of Interrogatory (LOI), which were signed and submitted in March 2023. Ex. 6; Ex. 7.

The LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct), F (Financial Considerations), H (Drug Involvement), and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his 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 his own behalf and submitted two exhibits, marked Exhibits A and B. The DOE Counsel submitted eleven exhibits marked as Exhibits 1 through 11.

## **II. Notification Letter**

### **A. Guideline E**

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

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<sup>2</sup> The Office of Personnel Management (OPM) report, which contains the findings of the investigation that was conducted following the Individual’s submission of the 2022 QNSP, indicates that investigators obtained information contained in the Individual’s criminal record. Ex. 11. Although the Individual provided February 2017 as the estimated date of the incident, the OPM report reveals that the correct date of this arrest and charge was June 2016. *Id.* at 81, 97.

<sup>3</sup> Although the Individual provided March 2017 as the estimated date of the incident, the OPM report reveals that the correct date of this arrest and charge was March 2015. Ex. 11 at 78, 82. The OPM report also indicates that the Individual was found guilty of the charge in January 2018 and was ordered six months of unsupervised probation. *Id.* at 82, 100.

Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying concern is the “[d]eliberate omission, concealment, or falsification of relevant facts from any . . . personal history statement, or similar form used to conduct investigations, . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities[.]” and “[c]oncealing or omitting information, concerning relevant facts to an employer, investigator, . . . or other official government representative[.]” *Id.* at ¶ 16(a), (b).

Under Guideline E, the LSO alleged that the Individual failed to report, at the time it occurred, a January 2019 arrest and charges of Driving While Intoxicated (DWI)-Drug Intoxication, Possession of Paraphernalia, Possession of Marijuana, and two counts of Peace Disturbance, and further, the Individual failed to disclose the aforementioned charges on his June 2022 QNSP. Ex. 1 at 1. The LSO also alleged that during an August 2022 recontact made by an investigator, the Individual “denied he was driving or that he was transferring marijuana the night of his January 2019 arrest,” but admitted in the first LOI that marijuana was found in his rental vehicle on the day of his arrest. *Id.* Further, the LSO alleged that the Individual failed to report, at the time it occurred, a December 2017 arrest and charge of Failure to Appear, and that although he indicated in his 2022 QNSP that he did not have any further arrests in the last seven years, he failed to disclose the aforementioned December 2017 arrest. *Id.* The LSO’s invocation of Guideline E is justified.

## **B. Guideline F**

Guideline F provides that failure to live within one’s means, satisfy debts, and meet financial obligations “may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 18. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are a “[f]ailure to file . . . or failure to pay annual Federal, state, or local income tax as required[.]” *Id.* at ¶ 19(f).

Under Guideline F, the LSO alleged that the Individual had failed to file his 2019 personal income tax return with the Internal Revenue Service (IRS). Ex. 1 at 2. The LSO’s invocation of Guideline F is justified.

## **C. Guideline H**

Under Guideline H of the Adjudicative Guidelines, “[i]llegal use of controlled substances . . . can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 24. Conditions that could raise a concern under Guideline H include “[a]ny substance misuse[.]” “possession of a controlled substance . . . or possession of drug paraphernalia[.]” and “[a]ny illegal drug use while granted access to classified information or holding a sensitive position[.]” *Id.* at ¶ 24(a), (c), (f).

Under Guideline H, the LSO alleged that in January 2019, the Individual was arrested and charged with DWI-Drug Intoxication, Possession of Marijuana, Possession of Paraphernalia, and two counts of Peace Disturbance. The LSO's invocation of Guideline H is justified.

#### **D. 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).

Under Guideline J, the LSO alleged that the Individual was arrested and charged with DWI-Drug Intoxication and the related charges in January 2019; that he was charged with Failure to Appear in December 2017; that he was arrested and charged with Domestic Assault in June 2016; and that he was charged with Driving While Suspended and Maximum Speed Limits in March 2015. Ex. 1 at 2–3. 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**

#### **A. August 2022 ESI and Follow Up Contact**

During the August 2022 ESI, when asked about the Peace Disturbance charge from the night of the January 2019 incident, the Individual told the investigator that the charge was the result of an altercation at a bar with some individuals he could not remember, and that the altercation was not the result of alcohol or drug consumption. Ex. 11 at 65. He could not remember “why he got into an altercation, or who the altercation was with[.]” *Id.* The Individual told the investigator that he could not remember “details from [the] night because it happened so long ago.” *Id.* The Individual did acknowledge that his behavior at the bar evidenced poor judgment. *Id.* The investigator also noted that the Individual “recounts that he rode with the others to the bar or restaurant that night where the altercation took place and that he [was not] the driver” of the vehicle in which illicit substance were later located. *Id.*

After being confronted with the drug-related charges arising out of the January 2019 incident, the Individual told the investigator that the illicit substances that were found in the car on that night were not his, “which is why those [drug-related] charges were likely dropped or dismissed.” *Id.* at 66. The Individual told the investigator that he “[does not] ever remember having drugs or marijuana on him that night because he [does not] do drugs.” *Id.* He stated that other than the Peace Disturbance charge, he “[did not] know that he was charged with . . . other offenses[,] otherwise he would have listed them on the [2022 QNSP].” *Id.* at 65–66. The Individual denied being placed on probation or parole and denied being ordered drug or alcohol treatment following the resolution of the criminal matter. *Id.* at 66.

The Individual was confronted with the December 2017 charge, and the investigator noted that the Individual “neither agreed nor disagreed with this incident[,]” as he had “no recollection of being arrested[.]” *Id.*

In an August 2022 follow up conversation with an investigator, the Individual told the investigator that he had no recollection of being under the influence of any substance on the night of the January 2019 incident, and he was insistent that he was not driving with illegal substances or paraphernalia in the car that night. *Id.* at 77–78. He also stated that “[h]e [does not] know why he was initially charged with drug charges” and he did not have any “explanation [for] them.” *Id.* at 77. He told the investigator during the follow up interview that he did not “remember what happened or who he was with” on the night of January 2019. *Id.* at 78.

## **B. LOIs**

The Individual confirmed in both LOIs that he had failed to file his federal income taxes for tax year 2019, and that he intended “to do so in the next 60 days.” Ex. 6 at 1; Ex. 7 at 1. He stated that he was “unaware that [he] did not” file his 2019 federal income taxes for tax year 2019, and only learned of this fact when he contacted the IRS. Ex. 6 at 1; Ex. 7 at 1. Regarding any money owed to the IRS, the Individual stated that he received “a bill from the IRS” indicating that he owed money for tax year 2018. Ex. 6 at 1; Ex. 7 at 1. The Individual admitted in the LOIs that he had filed his taxes for tax year 2018 in 2021 and went on to state that he is not certain about whether he owed any outstanding amount in income taxes. Ex. 6 at 1; Ex. 7 at 1. He also indicated that he was not certain whether he filed his state income taxes for tax year 2019. Ex. 6 at 1–2; Ex. 7 at 1–2.

Regarding the circumstances surrounding the January 2019 incident, which resulted in various charges, including DWI-Drug Intoxication and Peace Disturbance, the Individual stated in the first March 2023 LOI that due to the passage of time, he could not “exactly recall” the events of that day, but he did remember “being on a road trip and stopping somewhere . . . along the way.” Ex. 7 at 4. Although the Individual remembered “hanging around people” and getting stopped by law enforcement, he did not remember being arrested. *Id.* The Individual also indicated that he could not remember the amount of alcohol he consumed on the night of the January 2019 incident, that he could not “recall taking any substances,” and that he was “not sure how much marijuana or paraphernalia was found” in the car.<sup>4</sup> *Id.* He did, however, state that he believed that law enforcement only found “a small amount” of marijuana. *Id.* The Individual indicated that he did not “have any illegal drug involvement besides” the January 2019 incident, and he has since stopped associating with others who do have involvement with illicit substances. *Id.* at 10. The Individual stated that he was not able to “recall obtaining marijuana” and that he is “not sure how [the substance] was found inside [his] rental car.” *Id.* He denied the use of any illegal substances in the last 7 years and acknowledged that he is aware that marijuana is illegal under federal law. *Id.* at 12–13.

Regarding his failure to report the January 2019 arrest and the related charges to DOE, the Individual indicated in the first LOI that he “was confused with the whole legal process,” and he “thought [he] would only be charged with the peace disturbance after taking the plea deal from the prosecutors and lawyers[.]” resulting in his failure to report. *Id.* at 15–16. The Individual indicated that the matter was resolved following only his lawyer’s appearance in court, and he did not receive probation as a term of the plea. *Id.* at 5.

Regarding the December 2017 arrest and charge for Failure to Appear, the Individual stated in the first LOI that he could not “recall the details of the incident[.]” as he did not “recall being arrested or ever notified to appear in court.” *Id.* at 13. He denied making any court appearances and indicated his belief that the matter was resolved “outside of court with a lawyer[.]” *Id.* The Individual further stated that he did not disclose the December 2017 incident because he “[did not] know if [he] . . . received anything in the mail regarding” the offense, and he “feel[s] as though [he] was unaware of this” criminal matter. *Id.* at 16. He stated that he did not disclose the December 2017 charges on his 2022 QNSP, because he “was oblivious of this incident[.]” *Id.*

The Individual also stated in the first LOI that he could not remember the particulars of the March 2015 charges of Driving While Suspended and Maximum Speed Limits. *Id.* at 14. In the second LOI, he denied any deliberate omission or concealment of facts from the 2022 QNSP, and that he

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<sup>4</sup> In his hearing testimony, the Individual stated that he did remember drinking that night, although he did not “remember drinking and driving.” Tr. at 15–16. He stated that he did recall “stopping somewhere” and believes he had drinks at the location. *Id.* at 16. He could not recall undergoing any field sobriety tests after being stopped by law enforcement officials. *Id.* He denied using any marijuana prior to his arrest. *Id.*

“remember[s] telling the investigator everything [he] know[s] about the past events” during the ESI.<sup>5</sup> *Id.* at 17.

### C. Hearing Testimony

At the hearing, the Individual testified that he was trying to resolve the matter of his outstanding income taxes for tax year 2018, which is why he neglected to file for tax year 2019. Tr. at 60–61, 63. He testified that he became aware that he had not filed his income taxes for tax year 2019 at some point in 2020 or 2021. *Id.* at 66. He further testified that, as of the date of the hearing, he had filed his federal and state income taxes for tax year 2019.<sup>6</sup> *Id.* at 60–63; Ex. A; Ex. B. Exhibits A and B consist of a copy of the federal and state income tax returns for tax year 2019 the Individual testified he filed, which were dated the day prior the hearing. Ex. A; Ex. B. The Individual also testified that he had filed his income taxes for tax years 2020 and 2021 but has not yet filed for tax year 2022. *Id.* at 64.

During the hearing, the Individual stated that although he “[does not] remember getting arrested” on the night of the January 2019 incident, he does remember “getting pulled over for . . . expired tags” and receiving a court summons in the mail. *Id.* at 13–15, 24, 29–30. The Individual first testified that he could not remember whether any drug paraphernalia was found in the car at all. *Id.* at 18. The Individual later testified that he believes the car rental company, from which he had rented the car he was driving, did not clean the car, leaving someone else’s marijuana in the car. *Id.* at 13–15, 17, 30–31. He stated that he decided to assume responsibility for the marijuana when questioned by law enforcement about the ownership of the illicit substance because he did not want someone else to take the blame for the offense. *Id.* at 17–18, 30. At the hearing the Individual stated that he “was confused about what really happened the night of the January 2019 incident, so [he] was trying to figure out if [he] was driving[.]” *Id.* at 29. However, in earlier testimony, the Individual admitted that he had been driving the rental car on the night of January 2019. *Id.* at 14. When asked why he could disclose more of what happened the night of the incident in a March 2023 LOI as compared to the information he provided during the ESI, the Individual stated that another investigator had mentioned his former girlfriend’s name and questioned her involvement in the incident, which “brought up a lot of memories of the trip and what actually happened.” *Id.* at 33–34. The Individual stated that he previously could not remember who was in the car with him on the night of the incident. *Id.* at 35. Further, while the Individual first noted in his testimony that the person sitting in the passenger seat was “asleep most of the time,” he went on to testify that he could not remember if another person was in the car with him but believed that his girlfriend was with him. *Id.* at 13–14, 30.

The Individual testified that he did not report the January 2019 charges to DOE because the “legal process” caused him some confusion, and further, he did not feel that he needed to report the incident, as he “[did not] do [his] due diligence” and did not educate himself on “all the security

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<sup>5</sup> During the hearing, the Individual could not provide any more information regarding the March 2015 charges, as he could not remember it. Tr. at 57–58. He also testified that he did not disclose this incident on his QNSP “because [he did not] even remember it happening.” *Id.* at 58.

<sup>6</sup> The Individual testified that he had mailed in his state and federal income taxes for tax year 2019 the day before the hearing. Tr. at 67.

requirements, or else [he] would have known[.]” that he had a duty to report the incident following its occurrence. *Id.* at 18–21. He also testified that he “[did not] know how to report [the incident] correctly[.]” and that although he was aware that reporting an incident was a time sensitive endeavor, he did not remember exactly how much time he had to report an incident. *Id.* at 20, 23–24. He stated that he knew arrests had to be reported, and because he did not remember getting arrested, he did not report the incident. *Id.* at 24. He explained that he did not disclose all the charges that resulted from the January 2019 incident on the 2022 QNSP for the same reasons, stating that he did not understand that he was being charged with the stated crimes, but rather, he believed he “was just walking away . . . with peace disturbance charges.” *Id.* at 25–26.

At the hearing, he stated that he could not remember his December 2017 arrest, and that he was “really confused” by the matter. *Id.* at 37–39. He indicated his belief that the matter was resolved with the assistance of an attorney via a court appearance but could not remember contacting an attorney regarding the matter. *Id.* at 37–40. He did not remember reporting the incident to DOE, as he does not remember when he found out about the 2017 Failure to Appear charge. *Id.* at 37–38, 40.

Regarding the allegations pertaining to the June 2016 Domestic Assault charges, the Individual insisted that he had reported the incident or “told . . . someone at the security desk[.]” *Id.* at 46. He testified that he did not remember police reporting to the residence on the night of the incident and he did not remember being arrested but did acknowledge that he was arguing with his former wife. *Id.* at 53–54, 56. The Individual insisted that the argument “never turned physical[.]” *Id.* at 53. The Individual also remembered that the Domestic Assault charges had been dismissed, as his former wife attempted to “retract her statements[.]” *Id.* at 46–47, 56. He remembered receiving a text from his former wife, in which she expressed the aforementioned desire to “retract her statements[.]” *Id.* at 48–49. Although the State opted to continue prosecuting, the charges were ultimately dismissed because his former wife did not appear in court to testify. *Id.* at 47, 55. The Individual testified that he remembered this event and was thus able to disclose it on the QNSP, because he “was really angry at the time” and felt that his former wife’s behavior had been “unfair[.]” *Id.* at 47–48.

During the hearing, he testified that he occasionally “view[s his criminal] record every now and then[.]” and that he is usually prompted to examine his criminal record if he receives something like a speeding ticket. *Id.* at 41. When asked why he did not disclose several criminal charges on his QNSP in light of the fact that he occasionally examines his criminal record, the Individual indicated he was not sure whether he examined his record prior to completing the QNSP. *Id.* at 42. He stated that he does not check a copy of his criminal “record that often.” *Id.* Following questions regarding reasons why he was unable to remember much of the January 2019 incident and whether he will remember to take appropriate precautions with classified material, the Individual stated that he had been taking dietary “supplements to aid with [his] memory loss, so hopefully that will help [him] recollect information in the future.” *Id.* at 43–44, 52. When asked whether he remembered what he told the investigator during the ESI, the Individual indicated that he “[does not] remember exactly what [he] told her.” *Id.* at 26. He testified that he believes that what he told the investigator was “forced out[.]” resulting in contradictory responses. *Id.* at 26–27. He also indicated that he is subject to drug testing by his employer, and that he submitted to two drug tests within the six months prior to the hearing. *Id.* at 71. He testified that the results were negative. *Id.*



## V. Analysis

### 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.

I do not find the Individual's testimony in this case to be credible. The statements he provided throughout the record were often contradictory in nature. For example, he first asserted during his testimony that the person with him on the night of the January 2019 incident was mostly asleep in the car. In later testimony, he stated that he could not remember whether anyone was with him at all. In an August 2022 follow up with an investigator, he stated that he was not driving the car in which drugs were located on the night of the January 2019 incident, only to admit during the

subsequent hearing that he had been driving the car. When asked about the various incidents alleged in the SSC and the accompanying investigations, the Individual frequently stated that he simply could not remember. For example, when asked what he told the investigator during his August 2022 ESI, the Individual stated that he could not recall. This was despite the fact that the record contains a copy of the report that was produced to memorialize the ESI. The fact remains that the Individual was under a direct duty to report the 2017 and 2019 criminal charges and disclose all criminal offenses in the past seven years, including drug-related offenses. *See* DOE O 472.2A, Attachment 5.

As indicated above, the OPM report contains information regarding the Individual's criminal record, which revealed charges that the Individual failed to disclose on his QNSP. I have no indication before me that the Individual made any attempts to make prompt, good-faith efforts to correct the omissions, concealments, or falsifications before being confronted with undisclosed criminal charges during the August 2022 ESI. Accordingly, mitigating factor (a) is not applicable. *Id.* at ¶ 17(a). I also do not have any information before me that the alleged omissions and falsification were caused by any legal advice or the result of receiving advice from a person with professional responsibilities for advising or instructing the individual specifically concerning the security process. Accordingly, mitigating factor (b) is not applicable. *Id.* at ¶ 17(b).

I cannot conclude that the Individual's behavior was minor, that enough time has passed, or that the behavior was infrequent or occurred under unique circumstances. First, the Individual was under an ongoing obligation to report incidents like arrests and charges and was required to provide the requested information on his QNSP, so I cannot conclude that his failure to report took place under unique circumstances. I also cannot conclude that enough time has passed, as the most recent failure to disclose was in the context of the 2022 QNSP and the subsequent ESI. Further, the Individual's failure to disclose and report has been consistent throughout the processing of his security clearance, and his failure to provide any elucidating information during the hearing leads me to conclude that the behavior was not minor. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (c). *Id.* at ¶ 17(c).

I have no indication before me that the Individual has sought counseling to correct his behavior, and further, the LSO did not make any allegations that the Individual is vulnerable to exploitation, manipulation, or duress. Therefore, mitigating factors (d) and (e) are not applicable. *Id.* at ¶ 17(d), (e). I also have no allegation or assertion before me that the information came from a source of questionably reliability, or that the Individual's behavior was the result of association with persons involved in criminal activities. Therefore, mitigating factors (f) and (g) are not applicable. *Id.* at ¶ 17(f), (g).

## **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.

Although the Individual provided evidence of the fact that he completed the paperwork to file his federal and state income taxes for tax year 2019, the Individual did not provide any evidence that the appropriate tax authorities were in possession of those filings. Further, those same tax filings indicate that the Individual owes an outstanding amount in federal and state income taxes. Ex. A; Ex. B. I have no information before me that the Individual satisfied those outstanding amounts. Further, my concerns over the Individual's willingness to resolve any outstanding tax obligations to any tax authority is exacerbated by his admission that he has not yet filed his income taxes for tax year 2022. I have no information that he filed for an extension to meet his obligations for tax year 2022, or that he is seeking assistance from a professional to address the matter. Accordingly, as there is no evidence in the record that the Individual has made arrangements with the appropriate tax authority to file or pay the amount owed, the Individual has not mitigated the stated concerns pursuant to factor (g). *Id.* at ¶ 20(g).

I have no allegations before me that the Individual has experienced inexplicable affluence, that he has past due debt with various creditors, that he is seeking financial counseling, or that any of the stated financial concerns were beyond his control. Therefore, mitigating factors (b), (c), (d), (e), (f) are not applicable. *Id.* at ¶ 20(b), (c), (d), (e), (f). Lastly, as the Individual has not completely resolved the matter of his outstanding and unpaid income taxes for tax year 2019, and as he has not satisfied his 2022 tax obligations, I cannot conclude that the behavior happened so long ago or occurred under circumstances that do not cast doubt on his current reliability, trustworthiness, or

good judgment. Therefore, he has not mitigated the stated concerns pursuant to mitigating factor (a). *Id.* at ¶ 20(a).

### **C. Guideline H**

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

- (a) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
  - (1) Disassociation from drug-using associates and contacts;
  - (2) Changing or avoiding the environment where drugs were used; and
  - (3) Providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
- (c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) Satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Adjudicative Guidelines at ¶ 26.

Although marijuana and drug paraphernalia were found in the car the Individual was driving in January 2019, resulting in drug-related charges, the Individual denied any involvement in drug use. He insisted that the paraphernalia and the marijuana did not belong to him, despite taking responsibility for the items at the time of his arrest. Further, he testified that he was drug tested twice within the last six months at the behest of his employer, the results of which were negative. However, the record is bereft of any corroborating evidence, like witness testimony or drug test results. Further, as stated above, I have concerns over the Individual's credibility, and accordingly, I cannot rely on his testimony alone. As the Individual ultimately has the burden of mitigating the stated concerns, and as I do not find the Individual to be a credible witness, I cannot conclude that the Individual has mitigated the stated Guideline H concerns.

The alleged January 2019 incident took place only five years ago, and while the Individual held an access authorization. Further, there is nothing in the record to indicate that the alleged behavior

took place under unusual circumstances. I cannot conclude that the Individual mitigated the stated concerns pursuant to mitigating factor (a). *Id.* at ¶ 26(a).

Regarding mitigating factor (b), although the Individual was arrested for DWI-Drug Intoxication, Possession of Paraphernalia, and Possession of Marijuana on the night of the January 2019 incident, he denied any drug involvement and certainly never admitted to any substance misuse. He also never provided any statement of intent to abstain from all drug involvement and did not provide any information pertaining to a change in or avoidance of environments in which drugs were used. Accordingly, he has not mitigated the stated concerns pursuant to mitigating factor (b).

As the LSO neither alleged that the Individual abused prescription drugs, nor did the record indicate that the Individual sought treatment for any substance use, mitigating factors (c) and (d) are not applicable. *Id.* at ¶ 26(c), (d).

#### **D. Guideline J**

The Adjudicative Guidelines provide that conditions that can 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(a)–(d).

The Individual consistently stated that he could not remember important facts related to any of the alleged criminal incidents, save for some select facts, like how the marijuana discovered in the car he was driving in January 2019 was not his. He also did not dispute and admitted to the fact that he had entered a plea in the criminal matter that resulted from the January 2019 incident. Accordingly, before me, I have undisputed allegations that the Individual was arrested and charged with various crimes in 2015, 2016, 2017, and 2019, and a confirmed entry of a guilty plea to two counts of Peace Disturbance following the January 2019 charges and that he was found guilty of the March 2015 Driving While Suspended and Maximum Speed Limits charges. Far from presenting evidence that enough time has elapsed since any criminal behavior took place, the record reveals that the Individual engages a pattern of behavior that results in criminal charges every few years. As the Individual claimed that he failed to remember many pertinent facts, he did

not present any information indicating that the behavior happened under unusual circumstances. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (a). *Id.* at ¶ 32(a).

The Individual has not alleged that he was coerced or pressured into committed the alleged acts. Therefore, mitigating factor (b) is not applicable. *Id.* at ¶ 32(b). Although the Individual denied perpetrating any acts of physical violence against his former wife in 2016, he has failed to provide any corroborating evidence to establish that there is no reliable evidence to support that he committed the offenses. As stated above, I do not find the Individual a credible witness, and as it is his burden to mitigate the stated concerns, I cannot conclude that he has mitigated the stated concerns pursuant to mitigating factor (c). *Id.* at ¶ 32(c).

The record is bereft of any evidence of successful rehabilitation. The passage of time has only revealed more instances of criminal conduct, I do not have any evidence of higher education or job training, I do not have any evidence that the Individual has engaged in positive community involvement, and I do not have any evidence that the Individual has enjoyed a good employment record. Accordingly, the Individual has failed to demonstrate that he has mitigated the security concerns pursuant to mitigating factor (d). *Id.* at ¶ 32(d).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E, F, H, 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 he has not brought forth sufficient evidence to resolve the concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his 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