United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
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Filing Date: June 3, 2024	)	Case No.: PSH-24-0134
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	)	

Issued: August 23, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 or Eligibility to Hold a Sensitive Position."[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*. (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be granted.

I. Background

While the Individual is currently seeking employment with a DOE contractor that requires him to hold an access authorization, the Individual previously sought such a position with a different prospective employer. Accordingly, as part of the previous clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in March 2020. Exhibit (Ex.) 4.

When asked in the 2020 QNSP whether he had "received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace" within the last seven years, the Individual marked "yes." *Id.* at 102. He indicated that in February 2019, he was "[w]arned about signing a visitor into the lobby with unauthorized materials." *Id.* at 103. He explained that although the visitor had been asked to "remove the items[,]" she failed to remove one unauthorized item, which caused her ejection from the facility. *Id.* The warning was ultimately removed from the Individual's file "after one year with no further incidents." *Id.* In April 2020,

[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.

the Individual underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator. *Id.* at 135. Not only did the investigator discuss the aforementioned February 2019 warning with the Individual, but the investigator also confronted the Individual with information that he "attempted to manipulate a polygraph test in" November 2018. *Id.* at 135–37.

The Individual signed and submitted a QNSP in July 2023 in connection with his current bid for employment. Ex. 4. When asked whether he had "received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace" within the last seven years, the Individual marked "no." *Id.* at 25. In August 2023, the Individual underwent another ESI. *Id.* at 56. During the interview, the Individual was confronted with the February 2019 warning. *Id.* at 57. The following day, the Individual reached out to the investigator and alerted him to a previously undisclosed employment-related warning that was issued to the Individual in June 2023. *Id.* at 59.

As questions remained after the August 2023 ESI, the Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted in November 2023. Ex. 5. In the LOI response, the Individual discussed the February 2019 warning, the June 2023 warning, and the fact that in 2018, he signed a statement indicating that he had watched videos prior to submitting to the aforementioned polygraph test and had controlled his breathing during the test. *Id.* at 1.

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 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) of the Adjudicative Guidelines. Ex. 2. 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 presented the testimony of one other witness. *See* Transcript of Hearing, OHA Case No. PSH-24-0134 (hereinafter cited as "Tr."). The Individual also submitted one exhibit marked as Exhibit A. The DOE Counsel submitted five exhibits marked as Exhibits 1 through 5.

II. Notification Letter

Under Guideline E, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are the "[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct

investigations, . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities[,]" and "[d]eliberately . . . concealing or omitting information concerning relevant facts to an . . . investigator . . . involved in making a recommendation relevant to a national security eligibility determination[.]" *Id.* at ¶ 16(a) and (b). Another condition that could raise a disqualifying concern is,

> [c]redible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, combined withal available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Id. at ¶ 16(d).

Under Guideline E, the LSO alleged that:

1) Although he previously disclosed a February 2019 warning in his March 2020 QNSP, the Individual failed to disclose the same warning in his July 2023 QNSP. Ex. 2 at 4–5. The Individual stated that he did not believe he was required to list the warning, "as his employer removes such [warnings] after one . . . year." *Id.* at 4–5.

2) The Individual stated in his LOI response that he discussed his February 2019 warning during the 2023 ESI "after contemplation, to show he was not hiding anything." *Id.*

3) The Individual failed to disclose or discuss any disciplinary action, other than the February 2019 warning, during the August 2023 ESI. *Id*. However, the Individual called the investigator a day after the August 2023 ESI to inform the investigator of a June 2023 warning letter. *Id.* The Individual did not disclose this disciplinary action during the August 2023 ESI "because he thought [the matter] had been resolved." *Id.*

4) Investigators confronted the Individual with the allegation that he attempted to manipulate a polygraph exam in November 2018. *Id.* The Individual admitted "that he watched videos on how to take a polygraph on the internet prior to the exam[.]" *Id.* In the November 2023 LOI response, the Individual indicated that the polygraph examiner felt that "he was manipulating the polygraph" and that he signed a statement admitting that he had watched online videos. *Id.*

5) A source familiar with the Individual indicated that the Individual worked at a family business, which the Individual failed to disclose on the QNSPs. *Id.*

The LSO's invocation of Guideline E 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 their 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

February 2019 Warning

In 2020, the investigator noted the circumstances surrounding the February 2019 warning in the ESI report. The Individual took over for a coworker who went on a break, and accordingly, he was responsible for security in the lobby area of a facility. Ex. 4 at 135. During that time, a visitor went through the lobby metal detector. *Id*. After moving through the metal detector the first time, the visitor was asked to remove some items from her person and to walk back through the metal detector, which she failed to do. *Id.* Another employee subsequently discovered that the visitor had moved through the lobby with a prohibited item on her person. *Id.* The Individual was issued a written warning for this incident. *Id.* The investigator noted that the Individual indicated that the warning "was placed in his file for one year." *Id.* at 136.

As the February 2019 warning was not disclosed in the July 2023 QNSP, the investigator who conducted the August 2023 ESI confronted the Individual about the warning. Ex. 4 at 57. The investigator noted that when confronted with this information, the Individual "agreed[.]" *Id.* The report of the ESI indicated that the Individual told the investigator that he failed to disclose this information on the July 2023 QNSP "due to honest omission, and[] because the issue was resolved and fully covered during his" 2020 ESI. *Id.*

The Individual stated in his LOI response that he did not disclose the warning "prior to meeting with the investigator because [his] employer removes such letters one year after the situation has been resolved." Ex. 5 at 2. Accordingly, he did not "believe [the warning] needed mentioning[,] but [he] brought [the matter] forward after contemplation to show [that he] was not hiding

anything[.]"[2] *Id.* At the hearing, the Individual testified that he "misunderstood the question" on the QNSP asking about disciplinary actions and that although the matter had been resolved, he has now realized that the warning "should have been reported." Tr. at 36–37, 44, 48–51. He admitted that it was "a mistake on [his] part." *Id.* at 36, 49–50. He also indicated that he did not reach out to a qualified individual to seek clarification on the question. *Id.* at 37. Further, the Individual indicated in his testimony and request for a hearing that he remembered to provide information regarding the February 2019 warning on his 2020 QNSP because the incident was "relatively fresh." Tr. at 39, 49; Ex. 1 at 3. The Individual provided assurances in his testimony that he was "not trying to hide anything" and understood that investigators were going to contact his employer. Tr. at 40–41. He stated that he was forthcoming with the investigator who conducted the August 2023 ESI after he was confronted with the 2019 warning. *Id.* at 56–58. He stated that although he did not believe the matter "was still relevant," he "did expect it to possibly come up just because . . . it had been a topic of discussion before." *Id.* at 43–44, 48–49. When asked whether the 2023 QNSP was an autofill document that contained his responses from 2020, the Individual stated that he "[does not] believe [the 2023 QNSP] was all autofilled [sic]" and recalled "affirmatively answer[ing] the questions" in the 2023 QNSP. *Id.* at 38–39.

Regarding the February 2019 warning, a senior official at the Individual's workplace submitted a letter dated May 2024, in which he indicated that the Individual is in good standing and that the 2019 "documented oral counseling . . . was not disciplinary in nature, only corrective."[3] Ex. 1 a 2. As the senior official also testified at the hearing, he was asked to clarify this statement, and he indicated that the February 2019 warning was more akin to "a coaching situation." Tr. at 20–21, 29–30.

June 2023 Warning

A day after the initial August 2023 ESI, the Individual reached out to alert the investigator to the fact that he received a warning from his employer in June 2023. Ex. 4 at 59. The report stated that the Individual explained the circumstances surrounding the warning, stating that he had resolved a specific matter during the course of his workday and subsequently reported the matter to a superior. *Id.* Days later, he met with two superiors who issued the Individual a written and verbal warning "for failing to report the issue resolution." *Id.* The Individual alerted his superiors that he did, in fact, report the resolution. *Id.* The Individual stated that he "mistakenly thought that the . . . that the warning letter . . . was purged from his file." *Id.* But subsequently, the report indicated, the Individual "determined that the issue [was] still ongoing through an appeals process" between his union and the employer. *Id.* The investigator reached out to a source with the employer, who stated that the Individual "received a verbal warning about a failure to write a report[,]" but the

[2] When asked what he meant by his statement indicating that he discussed the matter "after contemplation," the Individual testified that he is "not sure why [he] used [the word] 'contemplation[,]'" and understands that the word makes it appear as though he was attempting to hide information from the investigator when he had no intention of doing so. Tr. at 59. He believes that he meant to use the word "contemplation" to describe the conversation he had with the investigator regarding the June 2023 warning. *Id.* at 60.

[3] The senior official testified that he sees the Individual several times a week in the workplace and trusts the Individual with the task of hiring and firing specific employees, "a position of trust." Tr. at 11–12, 17–18. The Individual is also relied upon to exercise "solid" judgment in his current position. *Id.* at 18–19. He also described the Individual as an honest and communicative person. *Id.* at 17.

source could not "recall the exact issue around the report." *Id.* at 65. The source also noted that the matter "was a minor issue and it should have been a teaching moment and not a warning." *Id.* The source also indicated that "to the best of his knowledge, [the] issue is not in the [Individual's] file." *Id.*

In his LOI response and in his testimony, the Individual indicated that he did not mention the June 2023 warning to the investigator until after their meeting because he "believed it had been resolved." Ex. 5 at 2; Tr. at 61–62, 65. The Individual stated in his request for a hearing that the matter of the 2023 warning "was in the grievance process." Ex. 1 at 3. A meeting had been scheduled in the matter in 2023, during which his employer was expected to discuss the revocation of the warning. Ex. 5 at 2; Tr. at 61. As the Individual went on leave the day prior to the meeting, he was under the belief that the meeting took place without him and that "the issue had potentially been resolved." Ex. 5 at 2; Tr. at 61. The Individual contacted the worker's union involved in the grievance following his August 2023 meeting with the investigator, and when he learned that the matter was still pending, he "reached out to the investigator and disclosed the information." Ex. 5 at 2; Tr. at 61–62, 65, 69–70. He testified that he did not want the investigator to believe he was attempting to hide anything, and even left the investigator a contact number with his employer. Tr. at 70. When asked whether he would have informed the investigator of the warning had the matter been resolved, the Individual stated that it would not have been necessary to do so, as the warning was "dismissed and removed[,]" and therefore, it would have been as though he "never actually got any discipline[.]" Tr. at 62. Further, he was under the belief that when he initiated the grievance process, the issuance of the warning had been halted, pending the final outcome of the grievance process. *Id.* at 62–68. He stated that he "[was not] really thinking" about the possibility of his employer informing the investigator of the June 2023 warning. *Id.* at 69.

The senior official who testified on behalf of the Individual stated that the "documented counseling letter issued to [the Individual] in June 2023 . . . was the lowest level of discipline according to" the employer's policy, and after the Individual explained his position on the matter, the letter was dismissed in late August 2023. Ex. 1 at 2; Tr. 23–26. The senior official determined that the discipline should no longer be in effect. Tr. at 26.

2018 Polygraph Test

As the 2020 ESI report indicated, the Individual was confronted by the investigator that he attempted to manipulate a polygraph test in 2018. Ex. 4 at 137. The polygraph test was the last step in the hiring process promulgated by a prospective employer. *Id.* The Individual told the investigator that he was nervous about the polygraph and that because he "lack[ed] . . . knowledge" about the test, he "watched videos on how to take a polygraph [test] on the internet[.]"[4] *Id.* The ESI report indicated that the test was inconclusive, as the polygraph examiner "could not get a read on [the Individual] due to [his] breathing." *Id.* To get a second chance at the polygraph test, the Individual "admitted to [a] statement" indicating that he had "watched a video to attempt to manipulate the polygraph" test. *Id.* The Individual denied watching a video "to learn how to lie on

[4] At the hearing, the Individual said that he did not know "what the operating procedures were" or what he was "supposed to do[,]" so he "did look up a video or two on . . . what they monitor and how they hook you up." Tr. at 75. He explained that he "tried to be as prepared as possible . . . especially for job interviews or things like that." *Id.*

a polygraph" and stated that he felt "pressured" into admitting that he had attempted to manipulate the test, something he wishes that he did not do in hindsight. *Id.*

In his LOI response, the Individual stated that he was "unsure why the [polygraph] test results read [as] inconclusive." Ex. 5 at 1. He explained that he was generally nervous, and although the exam was taking longer than expected, "the [polygraph] examiner was persistent in pressuring [him] to complete the examination." *Id.* He stated that the examiner kept stating "that he could not establish a baseline for [his] test because [the Individual] was nervous[.]" *Id.* The Individual explained in the LOI response and during the hearing that he was focusing on his breath to remain calm. Ex. 5 at 1; Tr. at 77. He was told by the polygraph examiner that this practice precluded the establishment of a testing baseline, and the polygraph examiner suggested that the Individual was "manipulating the polygraph" test. Ex. 5 at 1; Tr. at 77. Accordingly, after five hours of testing, the polygraph examiner determined that the test results were "inconclusive." Ex. 5 at 1. The Individual stated in his LOI response that he answered all questions honestly, and when asked by the polygraph examiner, he admitted that he had "watch[ed] videos" for the purpose of understanding the polygraph test. *Id.* At the end of the examination, the polygraph examiner "had [the Individual] sign a statement about [his] breathing and videos" and told the Individual that signing the statement "would further [his] chances of receiving a second polygraph" test.[5] *Id.* The second test was never forthcoming as the first exam was considered "unfavorable." *Id.* The Individual testified that the videos did not teach him how to control his breathing. Tr. at 78.

Unreported Work

During the 2020 investigation, a college friend of the Individual told an investigator that the Individual previously worked in a family-owned business. Ex. 4 at 148. The friend explained that through the Individual's work with the family business, the Individual would occasionally bring him food. *Id.* Information pertaining to this work was not disclosed in either QNSP. *Id.* at 23–29, 101–07. The Individual testified that he has "worked for [his] family [his] entire life[,]" as his family owns a small business. Tr. at 82. Accordingly, "anything that happens [at the business] is just a chore[.]" *Id.* at 82; Ex. 4 at 3–4. To live in the family home, he was expected to "help out" and "working in the shop was no different" than performing other tasks. Tr. at 82. He has not worked there for some time, but he would "work in [the] family shop" when he was home from college, and over the summer, he would secure additional employment. *Id.* He felt it was no different than "being asked by [his] parents to clean around the house[.]" *Id.* at 82–83. The Individual was also never financially compensated for the labor he performed for the family business. Ex. 4 at 1.

V. Analysis

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;

[5] The Individual stated that he "was very naïve in signing that paper[,]" as he did not think about the implications of the act. Tr. at 79. He feels that he should not have signed the document. *Id.*

(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 QNSP asks each applicant to "list all . . . employment activities, including unemployment and self-employment, beginning with the present and working back [ten] years." Ex. 4 at 23. The QNSP does not provide a definition for the term "employment."[6] *Id.* Regarding the matter of unreported "employment," as the Individual explained, it was labor that he performed for a family business without compensation. He explained that he was raised believing this labor was a regular chore to be performed, and the price of the privilege of living in the family home. Based on the facts before me, this work would likely not constitute a period of unemployment as contemplated by the QNSP, it does not constitute self-employment, and whether it constitutes employment is debatable, as the Individual was not paid for his labor. Notably, while the question asks individuals to list periods of unemployment, it does not specifically ask for information pertaining to uncompensated work. The Individual's failure to disclose the work he performed for the family business is reasonable under the aforementioned circumstances, and I am convinced that the Individual sincerely did not believe that his work for the family-owned business constituted

[6] Merriam-Webster Dictionary defines employment as "an activity or service performed for another especially for compensation or as an occupation." "Employment." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/employment. Accessed 21 Aug. 2024.

employment activity as contemplated by the applicable question in the QNSP. For the aforementioned reasons, I believe that the Individual did not recognize the nature of his labor as being an employment activity, but rather, believed it to be a routine chore imposed on him by his family. Accordingly, I do not believe that the Individual deliberately omitted or concealed this employment from the QNSPs. However, even if the Individual deliberately omitted this information from the QNSPs, the omission under these specific circumstances was so minor that it does not cast doubt on his good judgment, reliability, or trustworthiness.

While it would have been ideal for the Individual to look into the matter of the June 2023 warning to determine whether it was still pending or fully resolved through the grievance process prior to completing the QNSP, he did ultimately learn of the particulars of the matter following the 2023 ESI. He was not confronted with the June 2023 warning during the ESI. He did, upon learning that the matter had not been resolved, reach out to the investigator and properly disclose the information. He also testified that he had not paid any thought to the possibility that his employer might disclose the information to the investigator and there is nothing in the record before to suggest that he had disclosed the information to the investigator in fear that his employer might provide this information to his detriment. Although the information should have been disclosed on the 2023 QNSP, I find that the Individual has mitigated the stated concern pursuant to mitigating factor (a), as the record shows that he made prompt and good faith efforts to correct the omission.

Although any allegation that the Individual attempted to thwart or manipulate a polygraph test is concerning, I find that the Individual's explanation that he was focusing his breathing for the sole purpose of calming himself down is credible. Controlling his breath is a logical solution to the polygraph examiner's concern that he could not establish a baseline because the Individual was nervous. I also believe the Individual's explanation that he did not watch online videos for the purpose of thwarting or manipulating the polygraph test. As indicated above, I am not convinced that the Individual was controlling his breath for the purpose of manipulating the test, and this "technique" was the only manipulation tactic alleged. Presumably, the Individual would have learned at least more than one technique to manipulate a polygraph test had he watched online videos for this purpose. Additionally, the fact that the Individual signed a letter admitting to certain behaviors does not give me pause, because in doing so, he was attempting to secure a second chance at taking the polygraph test. Further, the test took place in 2018, approximately five years prior to the hearing. Years have passed since the Individual submitted to the test and there has not been any allegation of any similar behavior since. I find that enough time has passed, and the circumstances were unique enough to not cast doubt on the individual's reliability, trustworthiness, or good judgment.

A QNSP is an important tool in establishing whether an individual is fit to hold a security clearance. Any individual "seeking a security clearance should be well aware of the need for complete, honest and candid answers to DOE questions. Therefore[,] when completing a QNSP such an individual should err on the side of providing too much rather than too little information." *Personnel Security Hearing*, OHA Case No. TSO-0023 at 30–31 (2003). While the senior official's claim that the February 2019 warning was "corrective" in nature and more akin to a "coaching situation" gives me pause, I am concerned by the fact that the Individual read the question regarding disciplinary actions and provided information regarding the February 2019 warning on the 2020 QNSP, but not the 2023 QNSP. Not only did the senior official's explanation

of the matter come approximately one year after the Individual completed the 2023 QNSP, it appears from the record that the Individual understood the February 2019 matter to be a warning, as he indicated in his 2020 QNSP that he was "[w]arned about signing a visitor into the lobby with unauthorized materials." Ex. 4 at 103. In a manner consistent with a disciplinary action in general, the written February 2019 warning was placed in the Individual's file for one year. The evidence indicated that at the time he was completing the 2023 QNSP, he was under the firm belief that the February 2019 warning was a disciplinary action. While the Individual disclosed his belief that the matter had been resolved, as the warning had been removed from his file, I am not convinced by this explanation. Even if the Individual provided evidence to corroborate the assertion that the warning had been removed from his file, the relevant question on the QNSP simply asks whether an individual had "received a warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace[.]" Ex. 4 at 24–25. There is nothing in this question that makes any such distinction about whether a warning had been removed from one's file. A simple reading of the question indicates that the Individual should have disclosed the February 2019 warning on the 2023 QNSP. Further, the Individual recognized this fact that it was a mistake to omit the February 2019 warning from the 2023 QNSP. Tr. at *Id.* at 36, 49–50. Finally, the Individual's failure to disclose the February 2019 warning on the 2023 QNSP is materially different than his failure to disclose his prior work experience. The fact remains that the Individual knew that the February 2019 warning was a warning, which is why he disclosed it on the 2020 QNSP when asked about any warnings within the past seven years. In contrast, the Individual did not conceive of the labor he performed for the family business as employment activity primarily because he was not paid for his labor, and compensation for one's labor is a traditional feature of employment. The evidence strongly suggests that the legitimate confusion that existed when the Individual was answering questions pertaining to prior employment did not exist when he was answering questions pertaining to disciplinary actions within the past seven years. As the omission occurred in the context of the clearance process, I cannot conclude that it was minor. As the omission occurred in 2023, I cannot conclude that it occurred in the remote past. As the omission was ongoing until the Individual was confronted with the warning, I cannot conclude that it was infrequent. Lastly, I cannot conclude that the omission occurred under unique circumstances as completing a QNSP is a standard step in acquiring and maintaining an access authorization. The Individual has failed to mitigate the stated concerns pursuant to mitigating factor (c).

As the Individual did not come forward with the February 2019 warning prior to being confronted by the investigator in August 2023, mitigating factor (a) is not applicable. There is no information in the record before me that indicates the Individual reached out to legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes, resulting in the aforementioned omissions or behavior. Mitigating factor (b) is not applicable. I do not have any information before me that indicates the Individual obtained counseling in connection with the alleged behavior. Mitigating factor (d) is not applicable. The SSC did not allege any vulnerability to duress or blackmail, and accordingly, mitigating factor (e) is not applicable. The Individual did not assert that the information was unsubstantiated or from a source of questionable reliability. Mitigating factor (f) is not applicable. As the SSC does not allege any association with persons involved in criminal activities, mitigating factor (g) is not applicable.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E 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 concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that granting 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 granted. 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