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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: April 11, 2024) Case No.: PSH-24-0099
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Issued: September 6, 2024

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as 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 or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s request for access authorization should be denied.

I. BACKGROUND

The Individual was born in a foreign country (Country X) and became a naturalized citizen of the United States (U.S.) in 2015. The Individual is employed in a position that requires him to hold a DOE security clearance. In connection with the Individual’s request for access authorization, the DOE reviewed the Individual’s responses to a June 2020 Questionnaire for National Security Positions (QNSP), the Individual’s responses provided to an investigator from the Office of Personnel Management (OPM Investigator) during three Enhanced Subject Interviews (ESI) conducted in July and August of 2020, the results of a background investigation conducted by the Defense Counterintelligence and Security Agency (DCSA), and the results of a Counterintelligence Assessment conducted by the DOE Office of Intelligence and Counterintelligence (IN) and summarized in a June 2023 report. *See* Exhibit (Ex.) 3 at 14–66 (QNSP), 69–80 (ESI responses), 69–111 (background investigation results); Ex. 4 (IN Report). The conclusion of the IN Report was that the Individual “has foreign ties that create a risk to DOE equities which could be exploited by foreign entities; therefore, the risk to the Department’s equities . . . afforded by [the Individual’s] placement and access is **HIGH.**” Ex. 4 at 1 (emphasis original).

In March 2024, the local security office (LSO) informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1. The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals

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.

appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing, OHA Case No. PSH-24-0099 (Tr.). At the hearing, the Individual testified on his own behalf. The LSO did not call any witnesses. The Individual submitted thirteen lettered exhibits, marked Exhibits A through O. The LSO submitted seven numbered exhibits, marked Exhibits 1 through 7.²

II. 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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF FACT

A. The Individual's Travel History and Foreign Contacts

The Individual was born in Country X, immigrated to the U.S. in 1990, and became a naturalized citizen of the U.S. in November 2015. Ex. 4 at 2; Ex. 3 at 21; Ex. F; Tr. at 11–12, 14. The Individual's parents were citizens of Country X and resided there. Ex. 3 at 35–36. The Individual also has adult children that reside in the U.S. *Id.* at 39–40. The Individual possessed a foreign passport, issued by Country X, which the Individual used to travel outside of the U.S. from 1990 until the passport's expiration in January 2017. *Id.* at 19. He currently possesses a U.S. passport,

² This Decision will cite to all exhibits by reference to the .pdf page number, as opposed to the page number that may be located on the page itself.

issued when he obtained U.S. citizenship. *Id.* at 79–81. The Individual has worked at DOE facilities in various capacities for over twenty years. Ex. 4 at 2–4.

The Individual submitted the 2020 QNSP as part of his application for DOE access authorization. Ex. 3 at 14–60. In Section 10 of the QNSP, titled “Dual/Multiple Citizenship Information,” the Individual failed to report instances of travel to Country X in “October/November 2013 and October/November 2014” in response to a question that asked him to list the countries he had traveled to on a foreign passport. *Id.* at 22; Ex. 4 at 3 (IN Report). During two July 2020 ESIs, the Individual confirmed the same to the OPM Investigator and explained that his failure to accurately report his travel to Country X using his foreign passport was an “oversight,” and occurred because he “was not certain [of his] exact dates of travel.” Ex. 3 at 72, 76, 79. At the hearing, the Individual testified that he referred to his passport while completing the QNSP, but he found some of the stamps “difficult to read,” and he “probably misread” them. Tr. at 20–23.

In Section 20C of the QNSP, titled “Foreign Travel,” the Individual was asked to “[p]rovide information about all such trips made outside the U.S., including personal trips made in conjunction with official U.S. Government business on official government orders” within the last seven years. Ex. 3 at 43–44. The Individual’s response did not accurately report his travel to Country X taken between August 2017 and December 2019. *Id.* at 43–52, 77. During a July 24, 2020, ESI, the Individual told the OPM Investigator that he “accidentally did not list this travel on his [QNSP].” *Id.* at 77. During the hearing, the Individual attributed his failure to fully report his travel to Country X on Section 20C of the QNSP to his misunderstanding of the written questions. Tr. at 18–19. He also testified that if the QNSP had “clearly asked” him to report every trip, he would have been more careful and spent more time going through his travel records *Id.* at 18–20, 29.

In the QNSP, the Individual reported that from October 2007 to November 2015, the Individual was employed at a DOE laboratory (DOE Laboratory A). Ex. 3 at 29. The IN Report indicates that four years into the Individual’s employment, he expressed an intention to recruit foreign nationals from Country X for placement at DOE facilities, after which he was “counseled on [the] topic and discouraged from doing so.” Ex. 4 at 2. In October 2015, the Individual traveled to Country X three times; the IN Report indicates his travel was “supposedly to visit [his] ailing father.” *Id.* at 4. However, the IN Report reports that during briefings and debriefings with the DOE, the Individual “never mentioned [his] father’s health” and “refused to discuss [his] family, stating such was a personal matter, since [he] was not applying for a clearance.” *Id.*

At the hearing, the Individual did not dispute that he traveled to Country X and, while there, actively recruited foreign nationals for positions within the DOE. Tr. at 33–36. However, he asserted he was never in a position to make hiring decisions and many of the students he recruited never got hired, due to a lack of funding. *Id.* at 36–37, 40. He further testified that his managers were aware of his recruiting efforts, never discouraged him from the activity, and never “explicitly warned” him to not do so. *Id.* at 44–46. He further testified that the DOE encouraged “international collaborations” on DOE projects for which he has traveled to Country X since 2003. *Id.* at 19, 39–43. In support of his testimony, the Individual submitted several documents he claims show the

DOE permitted collaboration with foreign institutions on DOE projects and acknowledgement of his activities by his manager.³

As to the allegation he refused to discuss his father's health during debriefings with the DOE after his return from Country X in October 2015, the Individual testified that this allegation is false. *Id.* at 58. He explained that his employer required him to submit a form to his manager before he took a "foreign trip" and notify his manager when he returned. *Id.* at 71. The Individual submitted a copy of a Family and Medical Leave Act (FMLA) request, dated September 19, 2015, requesting leave to care for a "parent due to his/her serious health condition," from October 1, 2015, to October 1, 2016. Ex. E at 1–3. He also testified that because the debriefer had his approved family and medical leave documentation in their hand, there was no need to discuss his father's health, and it was "no big deal." *Id.* at 73–75. The Individual testified that since this debriefing, his mother and father have passed away. *Id.* at 82; Ex. K.

In his QNSP, the Individual reported that from November 2015 to March 2016, he was self-employed and tried to start a small business, but he stopped due to "lack of [progress]." Ex. 3 at 2. The IN Report indicates the Individual attempted to build "a radiation detector to sell to the [DOE Laboratory A]" with a scientist who is a citizen of Country X and a graduate of a premiere university in Country X, which DOE IN found "engages in high level defense research and cyber-attacks." Ex. 4 at 3–4, 8. At the hearing, the Individual denied creating a business. Tr. at 63–69. For example, when asked to explain what the objective of his business was, the Individual referred to the documentation of his background investigation, which found no business being registered in his state. *Id.* at 63–65; Ex. 3 at 90–91. He also testified that he had "mostly casual discussions" with the scientist, and questioned the source and validity of the allegations because the scientist is a U.S. citizen, and not a citizen of Country X. *Id.* at 65–66, 69.

In 2016, the Individual applied for job opportunities at another DOE laboratory (DOE Laboratory B). Ex. 4 at 3–4. The IN Report indicates that in his cover letter and resume, the Individual claimed to have engaged in four "teaching experiences," between 2005 and 2015, at three Country X universities, all of which the DOE IN found are "engaged in defense research for the [Country X] government," including "armament science and technology, artificial intelligence, control science and engineering, cyber, [and] nuclear weapons." *Id.* at 3. The IN Report also indicates the "teaching experiences" which occurred in "October/November 2013 and October/November 2014" were funded by a DOE laboratory and were considered "official travel." *Id.* at 3. The DOE IN also found the Individual did not report his teaching position, or submit a conflict-of-interest form, to the DOE regarding one of these teaching positions in Country X. Ex. 5 at 2. At the hearing, the Individual testified that during his "teaching experiences" between 2005 and 2015, he was not aware of the research being conducted at the universities. Tr. at 47–50, 52. He further testified that his managers were aware of his travel to Country X and the content of his courses. Tr. at 52–53.

³ For example, he submitted a copy of an abstract of an article, listing his name and the names of foreign nationals as contributors. Ex. C. He also submitted a 2012 performance report, in which his laboratory supervisor positively noted his recruitment efforts. Ex. D.

In the QNSP, the Individual reported that in January 2020, he began cohabitating with his now ex-girlfriend, a citizen of Country X. Ex. 3 at 34–35. The IN Report indicates that the Individual met the ex-girlfriend in January 2019, and in January 2020, the ex-girlfriend moved into the Individual’s home. Ex. 4 at 6. In a written statement attached to his QNSP, the Individual explained that the ex-girlfriend entered the U.S. in January 2020 to visit him. Ex. 3 at 66. He further explained that due to the COVID-19 pandemic, in March 2020, she was not able to return to Country X and “ended up” living with him at his home until June 2020, when she moved out. *Id.* at 66. During his July 2020 ESIs, the Individual told the OPM Investigator that the ex-girlfriend worked for a company in Country X, the name of which he could not recall, that makes concrete floor polish, until she retired in June 2020. Ex. 3 at 71, 79. The Individual also told the OPM Investigator that the ex-girlfriend was not “affiliated with a foreign government, military, security, defense industry, foreign movement, or intelligence service.” *Id.* at 71. The DOE IN discovered that the ex-girlfriend’s visa applications reflected associations with two universities and two companies in Country X. Ex. 4 at 6.

The Individual testified, as to the ex-girlfriend’s discovered associations with companies and universities, that during their relationship they did not discuss where she previously worked. Tr. at 81. He further testified that the ex-girlfriend completed her undergraduate education in Country X during the 1980s, when “[e]verybody [was] linked to the government.” *Id.* at 80–81. He also stated that on “rare occasions” he has some contact with the ex-girlfriend. *Id.* at 87–88.

B. The Individual’s Employment History

In his QNSP, the Individual reported that in October 2007, he began employment at DOE Laboratory A. Ex. 3 at 29. The QNSP asked the Individual if he had been fired from this employer, left employment “following charges or allegations of misconduct,” or left “by mutual agreement following notice of unsatisfactory performance.” *Id.* at 30. The Individual responded “No.” *Id.* He also responded “No” to a question asking whether he had received a written warning or been reprimanded or suspended by this employer. *Id.* However, the DOE IN found that the Individual was terminated from employment at DOE Laboratory A after engaging in “inappropriate behavior on many occasions” and “demonstrat[ing] a blatant disregard for [laboratory] rules and policies” while employed. Ex. 5 at 2 (indicating he was terminated for cause as a result of performance, not the security violations).

The Individual’s supervisor at DOE Laboratory A reported to the DOE IN that, in one instance, the Individual “failed to wear appropriate security badge/identification while on [DOE] property,” and after being asked to wear appropriate identification, the Individual “became irate and began shouting” at security officials. Ex. 4 at 3. At the hearing, the Individual testified that the incident with the security official was his fault, and that he should not have challenged the security officer. Tr. at 100–01. As to his failure to report this incident on his QNSP, the Individual stated that he did not think it was a “reportable incident,” and he thought it was “just a glitch.” *Id.* at 103.

The Individual’s supervisor reported another instance to the DOE IN, where, in 2014, the Individual used his personal cell phone to take a picture of a presenter and overhead slide during an unclassified presentation at DOE Laboratory A. Ex. 5 at 2. The Individual was confronted by laboratory security, who asked the Individual to delete the photo, and the Individual told laboratory

security that he deleted the photo but refused to turn over his phone to security officials. *Id.* The IN Report indicates the Individual's cell phone was confiscated and reviewed by the DOE IN and was found to contain "multiple photographs of [DOE] property and Country X on the device." Ex. 4 at 4. The DOE IN found that the photographs revealed that the Individual "intentionally deceived DOE IN during multiple foreign travel briefings/debriefings to Country X," during which he repeatedly claimed he "never traveled with any personal devices to Country X" and he "borrowed a phone while in [the] country." Ex. 4 at 4.

At the hearing, the Individual did not dispute that he used his personal cellphone to take a picture of a presenter and slide during a presentation at the laboratory, but he disputed the laboratory's policy prohibiting the use of cell phones. Tr. at 106–08. He stated that there was no "cell phone lockbox" outside of the auditorium where the presentation occurred, and "no sign warning [or] prohibit[ing] cell phone use or camera use." *Id.* at 106–07. When the security officer told him there was a sign prohibiting photographs at the entrance to the facility, he admitted he never read the sign despite passing it "hundreds of times." *Id.* at 107, 115. As to his failure to report this incident on his QNSP, the Individual stated he did not think it was a "reportable incident because it was resolved." *Id.* at 109. As to the allegation that the presence of the photographs of Country X on his phone show he deceived the DOE during multiple intelligence briefings, he disputed the allegation. *Id.* at 113. He said he never told the DOE he did not travel with personal devices, rather, he said he told them that he carried his personal cell phone to access flight information and email and he used his father's cell phone to make telephone calls. *Id.* at 111–12. As to his failure to report the incident related to his cellphone being confiscated on his QNSP, the Individual stated he did not believe this incident was "reportable." *Id.* at 113.

When asked on the QNSP to provide a reason for leaving his employment at DOE Laboratory A, the Individual indicated it was due to "Reduction of Research Funding." Ex. 3 at 30. However, the DOE IN found in December 2014, the laboratory issued the Individual a Memorandum of Expectations, which outlined his performance expectations, in an effort to help him improve his performance. Ex. 5 at 7. The Individual's poor performance continued, and in April 2015, the Individual's manager placed him on a Performance Action Track (PAT) plan, after the Individual failed to complete assignments and continued to receive poor performance reviews. *Id.* at 3, 7–44. The Individual's November 2015 separation is characterized in his employer's paperwork as "resigned in lieu of termination." *Id.* at 3, 6; Ex. 4 at 2, 4.

At the hearing, the Individual testified that funding for his research at DOE Laboratory A was reduced, so he was assigned to a project that he "wasn't good at." Tr. at 127. He did not dispute that the PAT was used to get him to improve his work performance, but he testified that once he received U.S. citizenship, he intended to resign from his position at the laboratory "regardless" of his performance. *Id.* at 125–26, 129. He argued that he did not leave this employment "by mutual agreement and in lieu of termination," because after he scheduled his swearing-in ceremony for U.S. citizenship, he notified his manager that he was resigning, and there was never a mutual agreement, which he asserted would be a document signed by both him and his managers. *Id.* at 131–33, 136.

The IN Report indicates that in May 2016, the Individual applied for several job opportunities, including one at DOE Laboratory B and another opportunity as a DOE Counterintelligence

Officer. Ex. 4 at 4. In its Report, the DOE IN found the Individual's cover letter and resume contained claims he had undergone "many rounds of Public Trust background checks and drug tests over the past decade," which he had passed "in the event a security clearance was necessary." *Id.* at 4. The DOE IN found, upon review, "no applications for any U.S. Government positions requiring public trust or clearance," and the Individual was "ineligible for any U.S. government position 'over the past decade,' since [he] gained U.S. citizenship in November 2015, six months prior to making this statement." *Id.* at 4-5.

At the hearing, the Individual claimed he did not know what a Public Trust background check meant, and stated it was "[his] fault" for including that information in his application materials, and he "did not intend to mislead anybody . . ." Tr. at 143-44. He recalled undergoing random drug tests with previous DOE employers and undergoing a background check before he was hired at one DOE laboratory, so he considered those to be "kind of a public trust background check." *Id.* at 144.

In the QNSP, the Individual reported that from October 2016 to July 2020, he was employed by a DOE contractor. Ex. 3 at 24, 70, 86-87. The Individual responded "No" when asked if he received "a written warning, been officially reprimanded, suspended, or disciplined for misconduct" while at this employer. Ex. 3 at 27. However, the DOE IN found that in June 2019, the Individual was issued a performance notification, called "Decision Making Leave," for "providing inaccurate and dated data in an environmental report." Ex. 4 at 5. This information was confirmed by the Individual's supervisor during the Individual's background investigation, who described the notification as "an official write-up."⁴ Ex. 3 at 88. At the hearing, the Individual testified that he failed to disclose it on his QNSP because he did not think issuance of the notice was a form of punishment, rather, he described it as "a formality" to demonstrate the seriousness of his error. Tr. at 150. He testified that being issued Decision Making Leave was "not as serious as serious as a suspension," and providing inaccurate data in the report was "a mistake." *Id.* at 149.

In September 2022, the DOE IN was informed that while employed with his current U.S. government employer, the Individual showed an "unusual interest in a newly hired employee." Ex. 4 at 5. The DOE IN learned that in January 2022, the Individual attended a virtual job fair, during which he identified a student as a good candidate for a job with his employer and encouraged the student to apply. *Id.* The DOE IN also found that the student "had radiation detector experience" and "participated in an international exchange study program at a prestigious [Country X] university" that "engages in high level defense research and has alleged links to cyber[-]attacks." *Id.* at 5. When the Individual inquired as to the student's hiring status with his employer, the Individual reportedly told someone that he "had an obligation to follow up with the student's advisor," which the Individual's employer found to be "quite unusual" because the employer is "an independent entity [that] has no obligations to any university in hiring students." *Id.*

⁴ The Individual's supervisor told the OPM Investigator that "Decision Making Leave" is "a day off work with pay intended for [contractor] employees to decide if they wanted to continue their employment." Ex. 3 at 88. He also stated that after having been granted Decision Making Leave, the Individual "was off for one day, and then returned to duty." *Id.*

At the hearing, the Individual testified that the student is a U.S. citizen and had “an intern experience in [Country X].” Tr. at 156–57. In a written statement submitted before the hearing, the Individual explained that he had “no direct contact with the [student] other than a brief 10 [minute] zoom call.” Ex. I at 2. He also wrote that it is not possible for a recruiter to know whether a student’s institution has any link to “alleged cyber-attacks.” *Id.* The Individual also submitted screenshots of his 2022 performance report that shows positive reference to his recruiting efforts and a comment that he “[v]olunteered to recruit for [his employer].” *Id.* at 3.

The Individual further testified that when the student applied for the position, he read the student’s resume, and saw the name of the student’s advisor, whom he recognized as a member of the university faculty and a member of a local professional organization. Tr. at 160–61. He stated that the student also volunteered the name of his advisor during their brief zoom call meeting at the recruiting event. *Id.* at 161–62. He further testified that because faculty at the university assisted him in finding a successful student for a job with his employer, by forwarding his email to students,⁵ he believed he was under an obligation to thank them. *Id.* at 162–63.

C. The Individual’s Financial Activity

The IN Report states that between 2011 and 2019, the Individual engaged in “large amounts of financial activity,” at two different banks. Ex. 4 at 6.

On July 30, 2011, the Individual withdrew \$52,000 from Bank 1. Ex. 3 at 74. During his July 17, 2020, ESI, the Individual told the OPM Investigator that at the time he made this withdrawal, he was going through a divorce and the \$52,000 was used to pay his divorce lawyers, and to pay his ex-wife, as part of a settlement agreement. *Id.* At the hearing, the Individual testified that he withdrew \$52,000 from Bank 1 to keep it from his then ex-wife, who attempted to transfer money from his bank account without his permission. Tr. at 165; Ex. M. He submitted a police report in which he reported that in June 2011, his then-wife attempted to transfer \$25,000 from his bank account without his permission. Ex. L at 46. As to the source of these funds, the Individual testified that he was “paid pretty well” by his employer at the time; he was one of their highest paid employees, and he submitted a written statement indicating there was “no other source of income beyond [his] regular work paychecks.” Tr. at 167; Ex. H at 28. He also stated his children were about to attend school, so he saved money for his children’s tuition. Tr. at 167–68. He further explained that after withdrawing the \$52,000, he put it in a box and stored it in his office at a DOE laboratory for nine months, until he began depositing portions of the money back into his bank accounts. *Id.* at 168.

On April 13, 2012, the Individual deposited \$20,100 at Bank 1, which the Individual told the OPM Investigator, “may have been money left over from paying his lawyer’s fees that he previously withdrew on July 30, 2011, at the same [bank].” Ex. 3 at 74. At the hearing, the Individual testified that on April 9, 2012, a judge ordered him to pay \$20,000 in legal fees to his ex-wife’s lawyer, as

⁵The Individual stated the job fair was posted on a web page, but he personally notified the university department chair and other faculty members about the fair and alerted them to a job opening with his employer. Tr. at 159–60.

part of a divorce settlement. Tr. at 170; Ex. H at 25. So, the next day, he deposited \$20,000 into his bank account and wrote a check to pay those fees. Tr. at 169–70, 178.

On April 20, 2012, the Individual deposited \$29,900 at Bank 1, which the Individual told the OPM Investigator was “money left over from [his] divorce proceedings and payments.” Ex. 3 at 74–75. At the hearing, the Individual testified that \$18,000 of this money was used to pay his wife, as a form of property distribution in his divorce. Tr. at 171, 178; Ex. L at 48; Ex. H at 26. He stated he kept the remaining funds in his bank account. Tr. at 178–79. He also stated that both the April 13, 2012, deposit of \$20,100 and the April 20, 2012, deposit of \$29,900 represented roughly the same amount of money he withdrew in July 2011. *Id.* at 169; Ex. H at 24. He stated he probably has the \$2,000 difference in his pocket or in an envelope somewhere. *Id.*

On April 19, 2019, the Individual made “two large cash deposits” each in the amount of \$15,000, at Bank 2. Ex. 3 at 74. The IN Report indicates that the Individual’s two deposits in April 2019, occurred after a trip to Country X. Ex. 4 at 6. During his July 2020 ESI, the Individual told the OPM Investigator that “he keeps emergency cash in his home,” and “takes approximately \$2,000 to \$3,000 in cash with him when he travels internationally in case of emergencies.” Ex. 3 at 74. He explained that some of the money he deposited on April 19, 2019, stemmed from “money that he had accumulated in the home,” which he chose to redeposit back into his bank account. *Id.*

At the hearing, the Individual testified he only made one deposit of \$15,000 on April 19, 2019. Tr. at 172. He had used that \$15,000 as an “emergency fund” during a trip he took to Country X, during which he moved his parents from Country X to his home. *Id.* He explained that when he traveled to Country X to take care of his parents, U.S. credit cards may have been unreliable, so he brought enough cash to use if any emergencies arose during the trip. *Id.* at 173–74. He stated he usually keeps “about roughly \$5,000 dollars for each person as an emergency fund just in case you had to change airplane, [get] stuck somewhere,” or if he has to cover medical costs. *Id.* at 173–74, 180. He further testified that he leaves “a few thousand dollars” in cash at home for his children to live on, for a month or two, while he is away from home. *Id.* at 173. He also stated that he would leave “some money” in his parent’s apartment in Country X, for them to use as an “emergency fund,” because, occasionally, they would have to go to the hospital and pay fees before being treated. *Id.* at 174; Ex. H at 26–27. He further explained that after he took his parents back to Country X, he did not need the cash at home, so he deposited some of the money back into his bank account. Tr. at 174–75. He also testified that he has not traveled outside the U.S. since December 2019. *Id.* at 176.

IV. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

In the Summary of Security Concerns (SSC) that accompanied the Notification Letter, the LSO explained that it possessed derogatory information that raised security concerns under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of the Adjudicative Guidelines. *Id.* at 1–9.

A. Guideline B (Foreign Influence)

Under Guideline B, foreign contacts and interests may be a national security concern if they create circumstances in which the individual may be “manipulated, or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest.” Adjudicative Guidelines at ¶ 6. Assessment of one’s foreign contacts and interests should consider “the country in which the foreign contact or interest is located,” including whether the country is “known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.” *Id.* Conditions that could raise a security concern under Guideline B include: a “failure to report or fully disclose, when required, association with a foreign person, group, government, or country”; and “counterintelligence information, whether classified or unclassified, that indicates the individual’s access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security” *Id.* at ¶ 7(c), (d).

In citing Guideline B, the LSO cited that the Individual did not accurately report his travel to Country X found on his U.S. and Country X passports. The LSO also cited as security concerns the information contained in the IN Report and its conclusion therein that the Individual has ties to Country X that create a high risk to DOE equities, which could be exploited by foreign entities. Ex. 1 at 5–6. The information listed from the IN Report included that he was counseled regarding his intentions to recruit foreign nationals at universities in Country X for placement at DOE facilities; the circumstances related to his “teaching experiences” in Country X, including his refusal to discuss the reason for his travel; his attempt to start a small business to build a radiation detector with a scientist from Country X; and his statements to the OPM Investigator regarding his ex-girlfriend that conflicted with the information discovered by the DOE IN. Ex. 1 at 4–6. The cited information justifies the LSO’s invocation of Guideline B.

B. Guideline E (Personal Conduct)

Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct “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.” *Id.* Conditions that could raise a security concern under Guideline E include the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications,” or “determine national security eligibility or trustworthiness.” *Id.* at ¶ 16(a). A security concern may also be raised under Guideline E related to a person “deliberately providing false or misleading information” to a DOE employer or investigator or engaging in conduct that “supports a whole-person assessment of questionable judgment, 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 [including] a pattern of dishonesty or rule violations” *Id.* at ¶ 16(b), (d).

In citing Guideline E, the LSO referred to the IN Report, in which the DOE IN found the Individual “willfully and knowingly failed to disclose unfavorable and derogatory information on his application for a U.S. Government clearance.” Ex. 4 at 6. The SSC referenced the following

findings in the IN Report: the Individual failed to report that during his employment at DOE Laboratory A, he failed to wear appropriate security badge/identification while on DOE property; he took pictures of a presenter and over-head slide and later refused to delete the photograph upon being asked to do so; he had photographs on his personal mobile phone that revealed he intentionally deceived the DOE IN during multiple foreign travel briefings/debriefings to Country X; he did not disclose that he was placed on a PAT and later resigned in lieu of termination due to poor performance; while applying for several job postings, he falsely claimed he underwent many rounds of Public Trust background checks over the past decade; he failed to report on his QNSP that, while employed with a DOE contractor, he was disciplined in June of 2019; and the DOE IN received reports that the Individual displayed an “unusual interest in a newly hired employee” who had affiliations to a university in Country X, which the DOE IN found “engages in high level defense research and has alleged links to cyber-attacks.” Ex. 4 at 6–8. The cited information justifies the LSO’s invocation of Guideline E.

C. Guideline F (Financial Considerations)

Under Guideline F, “[a]ffluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.” Adjudicative Guidelines at ¶ 18. Accordingly, a condition that could raise a security concern under Guideline F is “unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income.” *Id.* at ¶ 19(g). In citing Guideline F, the LSO referenced the various bank transactions, which include the July 30, 2011, withdrawal of \$52,000 from Bank 1; the April 13, 2012, deposit of \$20,100 at Bank 1; the April 20, 2012, deposit of \$29,900 at Bank 1; and the April 12, 2019, deposit of \$15,000 at Bank 2. Ex. 1 at 8–9 (referencing, without explanation, only a single deposit of \$15,000 as a security concern). The IN Report indicates the Individual’s April 2019 deposit occurred after a trip to Country X. *Id.* The cited information justifies the LSO’s invocation of Guideline F.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness presented at the hearing. After due deliberation, I have determined the Individual has not sufficiently mitigated the security concerns raised under Guidelines B, E, and F of the Adjudicative Guidelines. The specific findings that I make in support of this Decision are discussed below.

A. Guideline B

Conditions that could mitigate Guideline B security concerns include the following:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Adjudicative Guidelines at ¶ 8.

I find that none of the above mitigating conditions apply to resolve the Guideline B concerns. Because I rely upon the same information in reaching my conclusion with regard to each of them, I will analyze the above mitigating factors together.

The Guideline B concerns are based on the Individual's travel to Country X, his failure to accurately report that travel, and the circumstances that resulted in a counterintelligence report from the DOE IN that concluded the Individual's access to classified information presents a high risk. Most of the information outlined in Section III of this decision, which forms the basis of the Guideline B concerns, the Individual admits is true, and he provides an explanation for his behavior. However, when viewed together, his explanations fail to remove the concern derived from the plethora of conduct outlined in the SSC and IN Report.

I first note that the Individual confirmed that he had not accurately disclosed his travel to Country X despite having several opportunities to provide accurate information. He explained his inaccurate reporting by stating that it was a mistake due to either misunderstanding or misreading the questions on the QNSP. Standing alone, his explanation may be persuasive. However, I now turn to several examples of additional conduct that, when viewed in combination with his inaccurate travel reporting, prevents me from concluding the security concerns are resolved.

The first example is that the Individual, by his own admission, did not provide information in response to security questions related to his father's health after his 2015 "teaching experience" beyond submitting an FMLA form to his employer. He said that he did not provide additional information because he already provided information in his FMLA request and therefore there was

no need to discuss it further. I find that his explanation does not demonstrate a willingness to respond candidly to security questions.

Furthermore, the Individual confirmed that he did not disclose that his ex-girlfriend was connected to the institutions and universities later discovered by the DOE IN to be Country X. He explained his failure by stating he and his ex-girlfriend did not discuss her employment background. However, this explanation is dubious considering they were in a romantic relationship and lived together for approximately six months. It seems more likely that they would have discussed their careers. The fact that he knew that she previously worked for a “concrete polish” company demonstrates they had those discussions. There is no explanation offered for why they stopped these discussions at her most recent employer. Furthermore, the Individual’s statement that “everybody” in Country X was connected to the Country X indicates he could have responded more accurately to the OPM Investigator’s question.

The Individual also confirmed that he violated DOE Laboratory A’s security policies by failing to wear his badge and taking the photograph outlined in the IN Report. He stated that he unintentionally violated DOE Laboratory A’s security policy by taking the photograph, but he did not explain why he would first refuse to delete pictures when requested by security or why he would falsely state he had deleted them before it was discovered that he had not. One of the most concerning parts of this incident is the DOE IN’s assertion that the photographs on the phone demonstrated that the Individual had been repeatedly deceptive in denying that he had taken his personal electronic device to Country X. His explanation to rebut the DOE IN’s conclusion that he deliberately misled the DOE IN regarding the use of his personal electronic device in Country X is also unpersuasive because he does not provide any corroborating evidence to support his assertion or explain how the DOE IN misinterpreted his statements regarding his personal phone use in Country X. However, the fact that he initially refused to turn over his cellphone upon request provides a reasonable inference that he was motivated by a concern that a search of his device may uncover his deception.

The Individual confirmed that he engaged in recruiting and showed interest in the new employee at his current employer. He explained that his employers encouraged him to recruit and that he volunteered to do so, but he denied that he was counseled against specifically focusing on Individuals from Country X. His denial is not supported by any corroborating evidence. Furthermore, his interest in the new hire at his current employer prompted an official from that organization to report it to DOE IN out of concern. Although the Individual stated that he only met with the individual briefly, the fact that an official at his employer thought it appropriate to report his interest in recruiting individuals from Country X, combined with the other instances of concerning conduct regarding Country X in the record, outweighs his explanation for his behavior.

The Individual confirmed that he reported that he left employment with DOE Laboratory A due to a reduction of funding. However, not only was he placed on a PAT, but the paperwork from his employer characterized his separation as resignation in lieu termination. His assertion that he did not think he had to report this incident on security paperwork that specifically asked whether he had left his employment by mutual agreement following notice of unsatisfactory performance is dubious considering that he also failed to report his Decision Making Leave on his QNSP in response to a question that asked whether he had ever been suspended by his employer. The latter

instance presents clear example of concerning conduct because a plain reading of the question indicates that the Individual should have reported his suspension. The Individual explained that he did not report the suspension because he thought the issue was “resolved.” However, the security question at issue does not ask the result or outcome from the employer’s determination to issue discipline. The question merely calls on the Individual to report whether the discipline had been meted out.

As a last example, the Individual confirmed that he falsely represented that he had undergone several Public Trust background checks. I do not find credible his explanation for why he made that misrepresentation to potential employers, including the DOE. His proffered explanation is that he unknowingly provided inaccurate information out of ignorance as to what actually constituted a Public Trust background check. In the context of the record, this is another concerning example of providing inaccurate security-related information. Essentially, the Individual has attempted to recharacterize his conduct in a more favorable light than DOE IN’s interpretation of this conduct. Given the many instances of concerning conduct cited in the IN Report, it is difficult to believe there is an honest explanation for each and every one of them, particularly where those explanations are self-serving and largely uncorroborated.

After review of the record, I conclude that the Individual has not presented sufficient evidence to resolve the concerns presented by the information cited in the SSC, including the DOE IN assessment that the Individual’s access authorization presents a high risk. Accordingly, I do not find it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual or entity and the interests of the United States or that the Individual can be expected to resolve any conflict of interest in favor of the U.S. interest. Adjudicative Guidelines at ¶ 8(a), (b), and (f). I further find that he has not demonstrated that his contact with foreign citizens is so casual and infrequent as to resolve the risk for foreign influence or exploitation. *Id.* at ¶ 8(c). These are the very risks the IN Report assesses. Lastly, I conclude that he did not provide adequate evidence that his concerning activities were on U.S. Government business or approved by an agency or that he had promptly complied with agency reporting requirements around foreign contacts. *Id.* at ¶ 8(d) and (e). Accordingly, I find the Individual has not mitigated the security concerns raised under Guideline B of the Adjudicative Guidelines.

B. Guideline E

Conditions that could mitigate Guideline E security concerns include the following:

- (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.

I conclude that none of the mitigating factors apply to resolve the Guideline E concerns.

There is no evidence in the record that the Individual came forward, before being confronted with concerning facts, to resolve an omission, concealment, or falsification. Instead, the record demonstrates the Individual attempted to explain his conduct after the fact. Accordingly, I find he has not mitigated the security concerns under ¶ 17(a) of the Adjudicative Guidelines. The Individual has not claimed that his conduct was taken at the direction of, or due to being advised by, an attorney or some other professional concerning security processes. Therefore, I find ¶ 17(b) is not applicable to this case.

Regarding ¶ 17(c), the Individual's conduct demonstrates several instances of providing inaccurate information and a lack of candor to those making employment decisions and in response to security questions. It is therefore not minor. Regarding the remaining factors under ¶ 17(c), I refer to my discussion and findings under Guideline B and conclude that he has not demonstrated that the passage of time, frequency of his behavior, or the circumstances surrounding it demonstrate that his conduct is unlikely to recur or that it does not cast doubt on his reliability, trustworthiness, or good judgment. An example of the likelihood of his behavior continuing is that, at the hearing, the Individual maintained that his Decision Making Leave was "not as serious as a suspension" despite the clear evidence that he was suspended.

As to the remaining mitigating factors, there is no evidence to support that the Individual's conduct was due to circumstances from which he would have benefitted from counseling, or was caused by "stressors, circumstances, or factors" that would support a finding that his conduct is unlikely to recur. Adjudicative Guideline at ¶ 17(d). The LSO did not allege that the Individual's conduct

that raised security concerns under Guideline E related to his “vulnerability to exploitation, manipulation, or duress.” *Id.* at ¶ 17(e). The Individual has not demonstrated that the allegations that raised security concerns originated from a “source of questionable reliability” because, as stated above, he admitted to much of the behavior. *Id.* at ¶ 17(f). Finally, the LSO did not allege the security concerns stemmed from the Individual’s “association with persons involved in criminal activities.” *Id.* at ¶ 17(g). Accordingly, these mitigating factors are not applicable to this case.

For the aforementioned reasons, I find the Individual has not mitigated the security concerns raised under Guideline E of the Adjudicative Guidelines.

C. Guideline F

Conditions that could mitigate Guideline F security concerns include the following:

- (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.

I conclude that none of the mitigating factors apply to resolve the Guideline F concerns. I first analyze the applicability of ¶ 20(f) because the LSO’s concerns are derived from his apparent unexplained affluence. The Individual asserts his withdrawal of \$52,000 and subsequent deposits

were related to his divorce proceedings and his need to pay fees and distribute property for his ex-wife. However, the Individual did not provide sufficient evidence to establish the source of the \$52,000 present in his bank account on July 30, 2011, or the \$15,000 he deposited after his trip to Country X on April 12, 2019. The Individual testified that the \$52,000 represented his life savings, and he claimed he was one of the highest-paid employees at his DOE employer at the time. But he did not support this claim with any documentation or corroborating witnesses. Furthermore, I do not find his testimony, that in April 2019, U.S. credit or debit cards may or may not have worked in Country X and so he was reliant upon cash to conduct financial transactions while in Country X, to be reliable given the lack of supporting documentation. He did not provide any corroborating evidence to support his explanation for how he accumulated the \$15,000 in cash. Therefore, I find the Individual has not mitigated the security concerns related to his financial activity under ¶ 20(f) of the Adjudicative Guidelines.

I also conclude that he has not mitigated the concern under ¶ 20(a). Because I concluded that the Individual has not provided a persuasive explanation for his affluence, I do not conclude that passage of time, the frequency, or circumstances are such that the conduct is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. As to the remaining mitigating factors, there is no evidence to support that the Individual's financial activity was a "financial problem" that was largely beyond his control or that his actions demonstrated a failure to act responsibly. *Id.* ¶ 20(b). There is also no evidence to support that the security concerns raised by the Individual's financial activity were due to circumstances from which he would have benefited from financial counseling, a failure to repay overdue creditors, a past-due debt, or a failure to file or pay taxes. Therefore, I find mitigating factors ¶ 20(c), ¶ 20(d), ¶ 20(e), and ¶ 20(g), do not apply to this case.

For the aforementioned reasons, I find the Individual has not mitigated the security concerns raised under Guideline F of the Adjudicative Guidelines.

VII. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guidelines B, E, and F of the Adjudicative Guidelines. 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 in 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals