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

In the Matter of:	Personnel Security Hearing)	
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Filing Date:	August 20, 2024)	Case No.: PSH-24-0184
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Issued: November 18, 2024

Administrative Judge Decision

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material 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 access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. The Individual certified and submitted an Electronic Questionnaire for National Security Positions (QNSP) in November 2022 and was granted a security clearance in December 2022. Exhibit (Ex.) 4 at 135, 183.² He certified and submitted another QNSP in January 2024. *Id.* at 95. In both his QNSPs, he answered "No" when asked if he had been fired from any position in the last seven years. *Id.* at 77, 166. However, a background investigation of the Individual revealed that the Individual was terminated from his employment at a restaurant (Restaurant 1) in May 2022 due to neglect of company policy after selling alcohol to an undercover minor. *Id.* at 119–20. Moreover, in his October 2022 Pre-Employment Check (PEC) and on both his QNSPs,

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

² The DOE's exhibits were combined and submitted in a single, 228-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the DOE's exhibits by reference to the exhibit and PDF page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

the Individual stated that he left his employment at Restaurant 1 for a summer internship that began in June 2022; however, an employment record for Restaurant 1 reflected that he was terminated in May 2022. *Id.* at 77, 119, 165–66; Ex. 8 at 222. In addition, in his PEC, the Individual did not give permission to contact his employer at Restaurant 1. Ex. 8 at 222. The Individual also reported on both his QNSPs that he did not have any disciplinary actions in the last seven years. Ex. 4 at 77, 166. However, a manager at Restaurant 1 did not recommend him for a security clearance because he had failed to follow company policy in that he had been given several corrections for not following instructions on sanitizing the bar area and mixing drinks, and he was also terminated for neglecting company policy by serving alcohol to an undercover minor. Ex. 4 at 121.

A background investigation of the Individual also revealed that he had failed to report on his QNSPs and on his contractor Employment Application (EA) that he had been found guilty of furnishing alcohol to a minor in May 2022 and fined \$350. Ex. 4 at 88, 131, 176; Ex. 7 at 209. The background investigation also obtained employment verification records from another job at a restaurant (Restaurant 2) that the Individual had listed with an incorrect start date of 2018 instead of 2020. Ex. 4 at 126. The background investigation also revealed that the Individual failed to disclose three prior residences in his QNSPs. *Id.* at 70–72, 102, 107–09.

The Local Security Office (LSO), having unresolved questions, asked the Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted in May 2024. Ex. 5 (LOI); Ex. 6 (LOI response). In his LOI response, he discussed his omissions on the QNSPs regarding his termination at Restaurant 1, his omissions regarding disciplinary actions, and his omission regarding his criminal conviction. Ex. 6.

The LSO subsequently informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. Ex. 1 at 1–3. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) of the Adjudicative Guidelines. *Id.* at 4–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the DOE Counsel submitted eight numbered exhibits (Ex. 1–8) into the record. The Individual submitted seven lettered exhibits (Ex. A–G) into the record and testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-24-0184 (hereinafter cited as “Tr.”).

II. Notification Letter and Associated Security Concerns

The LSO cited Guideline E (Personal Conduct) as the basis for its concerns regarding the Individual's eligibility for access authorization. Ex. 2.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest

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

Adjudicative Guidelines at ¶ 15. The SSC cited the Individual’s omissions on both his QNSPs and his PEC regarding his failure to disclose his termination from Restaurant 1, his statements in his PEC and LOI that he left his employment due to an internship, and his request that his contractor employer not contact Restaurant 1. Ex. 1 at 4–5. The SSC also cited the Individual’s omissions in his QNSPs and related statements in his LOI concerning his failure to disclose his disciplinary actions received at Restaurant 1 comprised of several corrections for not following instructions on how to clean the bar area and prepare drinks, and for neglecting company policy for selling alcohol to a minor which resulted in his termination.³ *Id.* at 5. The SSC further cited the Individual’s omissions on his QNSPs and EA regarding his conviction for furnishing alcohol to a minor, and his LOI response stating that he failed to list his conviction because his conviction was many years ago and he “simply paid a fine.” *Id.* at 6. Additionally, the SSC cited the Individual’s statements in his QNSPs, PEC, and EA that he started working for Restaurant 2 in May 2018 although employment records stated he began working there in May 2020, and alleged that due to the discrepant employment start dates, this reflects a gap in the Individual’s work history. *Id.* Lastly, the SSC cited the Individual’s failure to list three prior residences. *Id.* The LSO’s assertions in the SSC justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(c).

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 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).

³ With regard to the corrections he received for cleaning and sanitizing the bar area and mixing drinks, the relevant QNSP question specifically asks whether the Individual had “received a written warning, been officially reprimanded, suspended, or disciplined for misconduct” Ex. 4 at 77. The investigator’s Report of Investigation (ROI) only states that a manager said she gave him corrections but provides no indication that the Individual received a written warning or was officially disciplined for matters related to cleaning the bar or mixing drinks. Therefore, I find that the omission of these “corrections” from the QSNPs does not present a security concern under Guideline E and I do not consider these allegations herein.

Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact

In September 2022, the Individual completed the EA for his DOE contractor position, and therein listed his employment history including his prior job as a server and bartender at Restaurant 1. Ex. 7 at 207. He stated in his EA that in May 2022, he left his job at Restaurant 1 for a summer internship. *Id.* In his EA, the Individual also denied having been convicted of a criminal offense. *Id.* at 209. In his October 2022 PEC, which is a background screening report prepared for the Individual's DOE contractor, the Individual disclosed that he left his job at Restaurant 1 in June 2022 for a summer internship. Ex. 8 at 222. However, the PEC stated that this information was not verified because the Individual did not give permission to contact his employer at Restaurant 1. *Id.*

The Individual submitted the 2022 QNSP in November 2022, and certified that his statements therein were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." Ex. 4 at 183. In the 2022 QNSP, he denied having been fired within the last seven years, having received a written warning from an employer in the prior seven years, and having been convicted or cited for any offense in the prior seven years. *Id.* at 165, 176. He also stated that in June 2022, he left his job at Restaurant 1 for a summer internship. *Id.* at 165–66. Additionally, he stated that he resided at one address from June 2014 to present. *Id.* at 161. The Individual was granted a security clearance in December 2022. *Id.* at 135.

The Individual submitted the 2024 QNSP in January 2024, and certified that his statements therein were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." *Id.* at 95. In the 2024 QNSP, he again denied having been fired within the last seven years, having received a written warning from an employer in the prior seven years, and having been convicted or cited for any offense in the prior seven years. *Id.* at 77, 88. He again stated he left his job at Restaurant 1 for a summer internship in June 2022. *Id.* at 77. Additionally, he stated that he resided at only one address from June 2014 to approximately July 2023. *Id.* at 71–72.

On February 1, 2024, the Individual underwent an Enhanced Security Interview (ESI) conducted by an investigator. *Id.* at 101. The investigator's Report of Investigation (ROI) stated that during the ESI the Individual verified the employment information which he had previously listed regarding Restaurant 1. *Id.* at 103. Also, during the ESI, the Individual corrected omissions from his 2022 and 2024 QNSPs regarding his residence history by disclosing that during specific time periods between August 2019 and May 2023, he had lived at three different residences which he had omitted from his 2022 and 2024 QNSPs.⁴ *Id.* at 102. There was no indication during the ESI that the investigator had confronted the Individual about his omitted residences prior to the

⁴ During the ESI, the Individual disclosed the following residences which he had omitted from his QNSPs: he lived in a college dorm from August 2019 to May 2020; he lived in another residence from August 2020 to May 2022; and he lived in a third residence from August 2022 to May 2023. Ex. 4 at 102; *see id.* at 71–72, 161 (residences listed in QNSPs starting in 2014 and thereafter).

Individual's disclosure. *Id.* at 102. He told the investigator that he had omitted these three residences because he believed that he was only required to report his primary residence. *Id.*

Subsequent to the ESI, the investigator interviewed the Individual's former supervisor and the General Manager at Restaurant 1 and learned about the Individual's termination from his job. *Id.* at 120–21. The Individual's General Manager reported that two days after the Individual furnished alcohol to an undercover minor, the local police department issued him a citation, after which he was immediately terminated by his supervisor and the General Manager. *Id.* at 121. The investigator obtained verification from local court records which reflected that the Individual was cited and found guilty of a violation of a city ordinance for "furnishing alcohol to persons under 21" and was required to pay a fine of \$350. *Id.* at 131.

On April 11, 2024, the Individual underwent a Triggered ESI (TESI) with the investigator. *Id.* at 104. During the TESI, the Individual "confirmed employment history and activities [he] submitted on case papers were accurate and current." *Id.* The investigator then confronted the Individual about his termination from Restaurant 1, his citation by the local police department for selling alcohol to an undercover minor, and his multiple corrections that he had received for failure to follow instructions regarding cleaning the bar area and mixing drinks. *Id.* After being confronted, the Individual admitted the following: he had served alcohol to a minor without asking the minor for ID as required, he received a citation, and he was terminated. *Id.* at 105. He stated that he omitted the information because he forgot about the incident. *Id.* at 104–05. Additionally, the Individual told the investigator that he did not remember being given corrections about sanitizing the bar area and mixing drinks. *Id.* at 104.

During the TESI the Individual also confirmed that the information regarding his police record that he had previously listed was accurate and current. *Id.* at 105. The investigator then confronted the Individual regarding his citation for which he was found guilty of furnishing alcohol to a person under 21, and regarding his fine of \$350. *Id.* at 105. The Individual admitted that he had been issued the citation, although he stated he believed the fine was \$400 or \$500, rather than \$350. *Id.* He stated that he omitted the information because he forgot about it. *Id.*

The record also reflects that the Individual reported on both his QNSPs, his PEC, and his EA that he began working at Restaurant 2 in May 2018, but employment records contained within the ROI stated the Individual began his employment at Restaurant 2 in May 2020. *Id.* at 78, 126, 166; Ex. 7 at 208; Ex. 8 at 222. Although the ROI stated that a "personnel record" reflected the Individual began working at Restaurant 2 in May 2020, this information was not actually obtained from Restaurant 2. Ex. 4 at 126. Rather, it was obtained from a third-party online database which the ROI stated was an "approved internet site." *Id.*

In his May 2024 LOI response the Individual stated that he did not report his termination from Restaurant 1 on his 2022 QNSP because he did not believe it was a "large issue." Ex. 6 at 201. However, when asked if he was concerned that reporting his termination on his QNSPs and interviews with the investigator would have an adverse effect on obtaining a security clearance, he admitted that at the time he submitted his 2022 QNSP, he was "likely somewhat concerned" about reporting it. Ex. 5 at 199; Ex. 6 at 201. He asserted in his LOI that he did not report his termination during the February 2024 ESI or initially during the April 2024 TESI because he had forgotten

about it. Ex. 6 at 201. He also noted that he did not believe that being fired from a restaurant is “that big a deal.” *Id.* He asserted that he did not report his termination on his 2024 QNSP because he had forgotten about it since it was almost three years after his termination. *Id.* In his LOI, he stated that he disclosed on his PEC that he left his job at Restaurant 1 in June 2022 for a summer internship because he “wanted to get the application done as [he] was excited at possibly getting a job offer” and he thought it would “make the process go by quicker.” *Id.* He also noted that he had started an internship that summer and “had already planned to leave the [Restaurant 1] job once that semester of college ended.” *Id.* Additionally, in his LOI response, the Individual stated that he did not give the DOE contractor permission to contact Restaurant 1 in the PEC because there was frequent turnover with managers and several of the managers that he had worked with had already left. *Id.* He stated the believed it would have been a “waste of time” for an investigator to speak to a manager who “never really knew [him]” and who could only provide the dates he worked at Restaurant 1. *Id.* In response to the LOI question about why he answered “No” on his QNSPs when asked whether he had received any disciplinary actions in the past seven years, the Individual stated that he was unaware of any employment warnings until the investigator informed him after he told the Individual he had contacted Restaurant 1. *Id.*

In addition, in the LOI, the Individual was asked why he answered in the negative when asked in his QNSPs about his police record and why he answered “No” on his EA when asked if he had been convicted of any criminal offense. Ex. 5 at 199–200. In his LOI response, the Individual stated that he failed to report his citation in his 2022 QNSP because “it was completely out of [his] mind by then.” Ex. 6 at 203. He stated he may have had “some recollection of it but [he] simply paid a fine” *Id.* He stated he failed to report his citation in his 2024 QNSP and EA because he had forgotten about it, as by this point, “it was many years ago” and he “assumed it was irrelevant information as it wasn’t that big of a deal even [at] the time it happened.” *Id.*

At the hearing, the Individual testified regarding the circumstances of his termination at Restaurant 1. Tr. at 19–20. The Individual confirmed the details of his citation for serving alcohol to a person under 21 years of age, including that he was issued a citation, was immediately terminated by his employer, and later paid a fine. *Id.* at 19–20, 50. The Individual testified that he told his parents and his fiancée about the incident, and his fiancée informed her parents about the incident. *Id.* at 21.

The Individual testified that he did not believe that serving alcohol to a minor was a criminal offense because it was a ticket and he just paid a fine, so he did not think it was a type of criminal offense such as a misdemeanor or felony. *Id.* at 22. In later testimony, however, when asked about his omissions regarding criminal offenses and citations, he stated he did not read the questions carefully or completely when filling out 2022 QNSP. *Id.* at 35, 47–49. For his 2024 QNSP, which he completed to obtain a higher-level clearance, he stated that he failed to disclose the incident because his answers from his 2022 QNSP had auto-populated so he only focused on updating any information that had changed since he had received his earlier security clearance. *Id.* at 24, 49. However, under cross-examination, he stated that he did not disclose the citation in his 2024 QNSP because he had forgotten about the incident. *Id.* at 38. He also testified that after the investigator confronted him with his failure to disclose the incident, he told the investigator that he did not view it as a “big deal.” *Id.* at 25. He explained that at that time, he did not think that the decisions he made at his part time job at a restaurant would be a security concern when evaluating his

decision making that involved classified information. *Id.* The Individual also testified that at the time that he answered questions about criminal history in his QNSPs, he thought that criminal history would be a concern for a security clearance if it was a “much more major crime” like a drug or assault crime, but not an incident of furnishing alcohol to a minor. *Id.* at 26.

Later in the hearing, when asked under cross-examination why he answered “no” on his EA when asked if he had any criminal convictions, he explained that he viewed his offense as being similar to a traffic ticket, so he did not think he needed to disclose it. *Id.* at 40; Ex. 7 at 209. However, he acknowledged that the EA stated that he may omit traffic violations for which he paid a fine of \$250 or less that did not involve alcohol or drugs, and he admitted that he paid a fine of \$350 which involved alcohol. Tr. at 40. Similarly, the QNSP question indicated that he did not need to report citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs. Ex. 4 at 88. Under cross-examination, the Individual acknowledged that at the time he certified his November 2022 QNSP, he had already paid a \$350 fine when he was convicted on June 2, 2022, which was approximately five months prior to the date he certified his November 2022 QNSP. Tr. at 36–37; Ex. 4 at 131.

The Individual also testified that in his November 2022 QNSP, he wrote that the reason he left his Restaurant 1 job was for an internship, and in response to the QNSP question asking if he had been “fired or quit after being told [he] would be fired[,]” he answered “no.” Tr. at 38. Although he admitted that he had provided these answers in his 2022 QNSP only five months after he had been fired, he asserted that he was “pretty busy in those past five months” so he “put it behind [him] [a]nd basically kind of [had] forgotten about it, in a way.” *Id.* at 38–39. However, in later testimony, the Individual provided a different reason for why he had written on his QNSPs that he left his Restaurant 1 job for a summer internship. *Id.* at 51–52. He testified that while he was still working at Restaurant 1, he already had an internship scheduled to begin during the summer and he had planned to formally quit his Restaurant 1 job once his college semester ended in order to begin his summer internship. *Id.* He stated that he denied being fired on the QNSPs because at the time he was fired, he had already intended to resign for the internship. *Id.* at 51–52. The Individual testified that, starting in late February 2024, after he had been working at his job for a DOE contractor for seven or eight months, he learned information about the importance of his work duties which changed his understanding regarding the importance of the questions asked in order to obtain a security clearance.⁵ *Id.* at 54–56. Despite this testimony, the Individual later testified that he reported that he left his job at Restaurant 1 for an internship in his response to the May 2024 LOI because he thought “it was quicker” to provide this response. Ex. 6 at 202; Tr. at 62. He further asserted that in his LOI response, he provided an answer which reflected what he had been thinking at the time he completed his first QNSP as opposed to providing an answer based on his

⁵ However, in later testimony, the Individual attempted to restate his testimony about his newfound understanding of the security clearance process. He testified that although in February or March 2024, he developed a newfound understanding of what it means to protect classified information that he is entrusted with, he asserted that he had not yet developed a newfound understanding of the security clearance “vetting process itself” until after or during the time he submitted his LOI response. Tr. at 64–65.

newfound understanding of the security process that he had acquired by the time he completed his LOI response. *Id.* at 62–63.

The Individual acknowledged that in his PEC for his employment as a DOE contractor, he did not give permission to allow his contractor employer to contact Restaurant 1. Tr. at 40; Ex. 8 at 222. He denied that the reason he refused to provide permission for his contractor to contact Restaurant 1 was because he was concerned that it would be discovered that he was terminated for cause after being charged for furnishing alcohol to a minor. Tr. at 41. He acknowledged that in his LOI response he stated that he was concerned that disclosing his termination from Restaurant 1 might have an “adverse effect” on obtaining employment although he also stated, “[he] didn’t believe it would cause [him] not to receive the job [and he] just didn’t want to really mention it.” Tr. at 41; Ex. 6 at 202. By way of explanation, he testified that he had only been concerned about reporting his termination from Restaurant 1 because it would result in slower processing of his security clearance, but he asserted he did not believe it would cause his clearance to be denied. Tr. at 45–46.

At the hearing, the Individual was asked about the three addresses he had failed to disclose in both his QNSPs, which he had subsequently disclosed during his February 2024 ESI. Tr. at 28–29; Ex. 4 at 102 (ESI); *see id.* at 71–72, 161 (residences listed in QNSPs starting in 2014 and thereafter). The Individual asserted that he did not know that he was required to report those residences because he viewed that question as similar to what was asked when filling out tax forms where it asked what is his primary address. Tr. at 28–29. He stated that all throughout the time he attended college his primary residence was his parents’ residence, which is what he had listed in this QNSPs. *Id.* at 29.

Regarding the Individual’s employment start date at Restaurant 2, the Individual testified that he began working there in May 2018 and he provided a copy of his 2018 W-2 from which was prepared by Restaurant 2 that verified his 2018 employment and showed his wages earned. Tr. at 27; Ex. E at 1. He stated that he continued working at Restaurant 2 until approximately 2020 or 2021, and he also provided a copy of his 2020 W-2 form from Restaurant 2 which showed his wages earned. Tr. at 28; Ex. E at 2. He asserted that the allegation in the SSC which stated he did not start working at Restaurant 2 until May 2020 was an error. Tr. at 52.

The Individual asserted that his understanding regarding the QNSPs and the security clearance process had changed since the time he completed the QNSPs. *Id.* at 59–60. He stated that at the time he completed his first QNSP, he did not understand what the nature of his job duties would be. *Id.* However, he stated that since February 2024, he had developed a great understanding of the importance of his work and the security clearance process. *Id.* at 60. He provided an example where he spoke to a past manager at his DOE contractor job who informed him that the reason the security clearance process asks him specific questions is to prevent him from becoming a security risk including being at risk for blackmailing. *Id.* The Individual indicated that he also gained a helpful perspective regarding the vetting process for security clearances when he underwent an evaluation with an evaluating psychologist (Psychologist). Tr. at 66; Ex. C (Report from Psychologist dated October 1, 2024, stating the Individual underwent a psychological evaluation with her on September 30, 2024). The Individual testified that during his evaluation, the Psychologist discussed the security clearance process with him. Tr. at 66. He indicated that the

Psychologist spoke to him about what she “looks for” when determining whether a person can be trusted with classified information. *Id.* He indicated that their discussion provided him with an understanding that there are psychological aspects as well as a person’s actions that are considered as part of the security clearance process. *Id.*

In her report, the Psychologist opined that the Individual does not meet criteria for any mental health diagnosis and concluded that he “does not present with any condition at this time that could pose a significant risk to his judgment, reliability or trustworthiness concerning classified information.”⁶ *Id.* at 4. The report stated that the Individual “acknowledged that he understood that [the evaluating psychologist’s] role in the evaluation is to function as an independent evaluator” *Id.* The Psychologist stated that the Individual was forthcoming and cleared up any discrepancies from his prior investigation. *Id.* She explained that the Individual felt that the “information [regarding] his job at [Restaurant 1] and his past particular dates of residency were not consequential to the job itself” or his ability to perform his role at his DOE contractor position. *Id.* The Psychologist stated that the security concern regarding a “criminal offense” for selling alcohol to a minor is a “matter of semantics” because he was issued a citation, “not unlike a driving citation, and only had to pay a fine.” *Id.* She stated that she discussed with the Individual that “all details matter” for government jobs and security clearances, and she stated that the Individual was receptive to this information. *Id.*

V. Analysis

Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

⁶ The Psychologist’s report stated that her opinion was based on a clinical interview and observations, review of records, and administered psychological tests. Ex. C at 1.

- (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.

As an initial matter, I find that the SSC allegation that the Individual provided false or misleading information, thereby reflecting a gap in employment history, by not accurately disclosing his employment start date at Restaurant 2 is an erroneous allegation that does not present a security concern. The Individual reported in his QNSPs and PEC that he began working at Restaurant 2 in May 2018. The Individual testified at the hearing that he began working for Restaurant 2 in 2018, and he submitted his W-2 from Restaurant 2 for 2018 which reflected that he was in fact employed there in 2018. He also included his 2020 W-2 from Restaurant 2 which shows his continued employment in 2020. The SSC alleges that the Individual's employment at Restaurant 2 began in May 2020 and that the difference between the Individual's reported May 2018 employment start date and the May 2020 start date reflects a gap in employment history. However, this information was obtained from a third-party online database. I find the W-2 forms prepared by Restaurant 2, combined with the Individual's testimony, to be a more reliable source of employment verification than the third-party information obtained through the investigation. Therefore, I find that the allegation by the LSO in the SSC pertaining to the Individual's employment start date in Restaurant 2 is incorrect and does not present a security concern.

Regarding the first mitigating condition, the Individual's omissions of relevant facts, and providing false or misleading information is centered on his failure to provide truthful and candid answers in his November 2022 and January 2024 QNSPs, his PEC, and his EA. The Individual's efforts to correct the omissions were not prompt because he did not disclose his omissions regarding his termination from Restaurant 1 and his conviction for furnishing alcohol to a minor until he was confronted during the April 2024 TESI. While the report of the February 2024 ESI indicated that he voluntarily corrected his QNSP omissions regarding his failure to list three prior residences, I find this was not a "prompt, good-faith effort" because it was not until nearly two years later that he decided to correct his omission that had initially occurred in his November 2022 QNSP. Moreover, he also had the opportunity to correct his omission in his January 2024 QNSP but chose not to do so. For these reasons, the first mitigating condition is inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition is not applicable because the Individual did not indicate that his omissions were caused or contributed to by advice of counsel or any other person with professional responsibilities for advising him with respect to security processes. *Id.* at ¶ 17(b).

Regarding the third mitigating factor, the Individual's omission of three temporary residences while he was a college student was of trivial significance and do not seem to have a significant bearing on the types of concerns that Guideline E was intended to address. Moreover, I find that the Individual provided a plausible explanation for the omission, and he made a good-faith effort to correct the missing residential information from his QNSPs before he was confronted by the investigator. Therefore, I find this omission to be so minor and that it occurred under such circumstances that it does not cast doubt on his good judgment, reliability, or trustworthiness. Turning to the Individual's other omissions, however, the Individual's multiple instances of knowingly hiding relevant information speaks to the types of concerns that Guideline E was intended to address. I cannot find that the concerns are mitigated in light of the relative seriousness of the Individual's offense, the passage of time, the frequency of his conduct, or the circumstances of his conduct. 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." OHA Case No. TSO-0023 at 30-31 (2003). In making this finding, I have considered, but am not convinced by, the Individual's explanations regarding his multiple omissions and the false or misleading information he provided throughout the course of his security clearance investigation including in his QNSPs, TESI, EA, and LOI. I am particularly concerned that many, if not most, of the Individual's explanations are inconsistent with other explanations for the same omissions. For example, although the Individual was terminated in May 2022 and was found guilty of furnishing alcohol to a minor in June 2022 when he paid a \$350 fine, he asserted at the hearing that he had failed to disclose his termination because he had forgotten about the incident when he completed his November 2022 QNSP. I find it implausible that the Individual simply forgot that he had been terminated, only five months after he received a citation for a criminal offense and was fired the same day by his manager. Moreover, in later testimony, he stated that he wrote in his QNSPs and his EA that he had left his Restaurant 1 job for a summer internship instead of disclosing that he had been fired because he already had an internship scheduled to begin during the summer and he had planned to formally quit his Restaurant 1 in order to begin his summer internship. However, in his LOI response, the Individual stated that he disclosed on his PEC that he left his job at Restaurant 1 in June 2022 for a summer internship because he "wanted to get the application done as [he] was excited at possibly getting a job offer" and he thought it would "make the process go by quicker." Ex. 6 at 202. I find that the multiple, inconsistent explanations the Individual provided for listing his internship instead of disclosing his termination are not convincing, and actually serve to undermine his credibility.

In addition, at the hearing, the Individual denied that the reason he refused to provide permission for his contractor to contact Restaurant 1 was because he was concerned that it would be discovered that he was terminated for cause due to his criminal offense. In his LOI response, he stated he believed it would be a waste of time to contact Restaurant 1 due to frequent management turnover, although he had also written in his LOI response that he was concerned that disclosing his termination could have an adverse effect on obtaining employment. At the hearing, he asserted that although he believed that disclosing his termination would result in slower processing of his

security clearance, he did not think it would cause him to not obtain employment at his contractor job. Again, I find that these multiple, inconsistent explanations do not resolve the concerns associated with his omissions and misleading statements.

Regarding the Individual's failure to report his criminal offense, I have considered, but am not convinced by, the Individual's explanation that he did not think that he was required to report his conviction for furnishing alcohol to a minor because he only paid a fine and thus, thought it was similar to a traffic citation. As discussed above, the QNSPs clarified that he did not need to report citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs. The Individual knew that the fine he paid was greater than \$300 and involved alcohol.

Regarding the matter of unreported disciplinary actions at the Individual's job at Restaurant 1, as explained *supra*, I find that the information pertaining to corrections that the Individual received concerning how to clean the bar area and mix drinks to not present a security concern. *Supra* n.3. As to his termination, however, the record established that the Individual was terminated for neglecting company policy when he served alcohol to an undercover minor. As being terminated from a job is clearly a form of disciplinary action, the Individual should have known to disclose it in his QNSP.

The Individual's omissions and misleading statements, as discussed above, are not infrequent as they started with his September 2022 EA and his November 2022 QNSP, and continued in his 2024 QNSP, LOI, ESI, as well as initially during his TESI until he was confronted by the investigator. Also, as these omissions and misleading or false statements occurred in the context of the clearance process, I cannot conclude that they were minor offenses. Moreover, as the omissions occurred as recently as 2024, I cannot conclude that they occurred in the remote past. I note that regarding his failure to list his three prior residences on his QNSPs, it is not apparent that the Individual sought to gain any advantage by omitting details of his residential history. However, the Individual has exhibited a pattern of carelessness, at best, in completing his QNSPs and in his application related to his DOE contractor position which calls into significant question his reliability and willingness or ability to comply with rules and regulations. In addition, the Individual provided multiple explanations for his omissions including attributing them to memory issues rather than taking accountability for his actions. Further, many of his explanations contradict each other or are at least inconsistent with his other explanations. As such, I cannot find that his behavior is unlikely to recur or does not cast doubt on the Individual's reliability, trustworthiness, or good judgment. Therefore, I conclude that the third mitigating condition is inapplicable. *Id.* at ¶ 17(c).

Regarding the fourth mitigating condition, the Individual provided a copy of a report from the psychological evaluation he underwent with the Psychologist. However, he has not participated in counseling and the report made clear that he met the Psychologist only for an evaluation. While the Psychologist opined that the Individual does not have a mental health diagnosis or condition that could pose a significant risk to his judgment, reliability, or trustworthiness, I note that the SSC

contains no allegations of security concerns pertaining to psychological conditions. Rather, the SSC only presents security concerns under Guideline E. *Id.* at ¶ 17(d).

Regarding, the fifth mitigating condition, the SSC did not allege any vulnerability to exploitation, manipulation, or duress. Therefore, I find that the fifth mitigating condition is not applicable in this case. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the information alleged by the LSO was substantiated through reliable sources developed during the security clearance investigation. *Id.* at ¶ 17(f). The seventh mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual associated with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

VI. Conclusion

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals