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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: November 3, 2025	)	Case No.:	PSH-26-0011
	)		
	)		

Issued: June 12, 2026

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as "the Individual") for access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material or Eligibility to Hold a Sensitive Position."[1] For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. Derogatory information was discovered regarding the Individual's candor and psychological health. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual presented the testimony of two colleagues, referred to as Security Police Officers (SPO) 1 and 2, and testified on his own behalf. The Personnel Security Specialist who prepared the case for the LSO testified as well. The LSO presented the testimony of the DOE contractor psychologist who had evaluated the Individual. *See* Transcript of Hearing, OHA Case No. PSH-26-0011 (hereinafter cited as "Tr."). The LSO submitted twelve exhibits, marked as Exhibits 1 through 12 (hereinafter cited as "Ex."). The Individual submitted a list of exhibits he planned to submit (Ex.

[1] Under the regulations, "'[a]ccess authorization' means 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). Such authorization will also be referred to in this Decision as a security clearance.

A),[2] a Word document with inaccessible links to cloud-stored documents not identified in the exhibit list, and a brief arguing that the legal basis for the security clearance program was flawed and that, under the whole person concept, the Individual was not at risk of becoming a "traitor."[3] Ind. Brief at *passim*. The Individual also submitted statements of support from two colleagues. Ex. B; Ex. C.[4]

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E and I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Guideline E states that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. 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. Conditions that could raise a security concern include:

(a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used

[2] The list included a Power of Attorney form, the Summary of Security Concerns and "associated due process/procedural materials," the Individual's declaration, declarations of support from witnesses, and "further evidence of mitigation, notably psychological condition documentation post-dating the Government's evidence, evaluating treatment and a favorable prognosis." Ex. A at 1.

[3] Regarding the Individual's evidence, OHA received the submission on April 8, 2026, after the April 7, 2026, 5:00 PM due date, of which the Individual had been aware for over three months. Email from Judge Martin to DOE Counsel and Individual's Attorney (April 8, 2026 2:16 PM) (2:16 Email). The submission was a Word document with links to Google Drive folders, a format expressly prohibited in the scheduling order the Individual received on January 7, 2026. *Id.* Moreover, the links were secured such that DOE Counsel and I could not access them prior to the pre-hearing conference, which was to be held seven days prior to the hearing in accordance with 10 C.F.R. § 710.25(f). *Id.*; Email from DOE Counsel to Judge Martin and Individual's Attorney (April 8, 2026 1:53 PM) (1:53 Email). DOE Counsel moved that the late submission should not be accepted into evidence. 1:53 Email. I directed the Individual's counsel to submit any opposition to the motion by 5:00 PM that day. 2:16 Email. The Individual's counsel made no submission by the deadline. Email from Judge Martin to Individual's Attorney and DOE Counsel (April 9, 2026 10:37 AM). Because the Individual failed to submit evidence in a permissible, or even accessible, format prior to the deadline, I granted the motion. *Id.*; 2:16 Email. I gave the Individual leave to submit written statements of support in lieu of duplicative witness testimony, which he did. Pre-Hearing Conference Memorandum at 2. I also allowed the materials submitted on April 8, 2026, which were sent as accessible documents (not links) to be entered into evidence. 2:16 Email. These included the list of exhibits he planned to submit and the legal brief.

[4] The Individual initially submitted a third statement, but rescinded it because the person it was attributed to had not written or authorized the use of the statement. Tr. at 11, 230–32.

to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) Deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) Any disruptive, violent, or other inappropriate behavior;

(3) A pattern of dishonesty or rule violations; and

(4) Evidence of significant misuse of Government or other employer's time or resources;

(e) Personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) Engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) While in another country, engaging in any activity that is illegal in that country;

(3) While in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) Violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) Association with persons involved in criminal activity.

Id. at ¶ 16.

Guideline I states that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline." *Id.* at ¶ 27. Conditions that could raise a security concern and may be disqualifying include:

(a) Behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) An opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

(c) Voluntary or involuntary inpatient hospitalization;

(d) Failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions; and

(e) Pathological gambling, the associated behaviors of which may include unsuccessful attempts to stop gambling; gambling for increasingly higher stakes, usually in an attempt to cover losses; concealing gambling losses; borrowing or stealing money to fund gambling or pay gambling debts; and family conflict resulting from gambling.

Id. at ¶ 28.

The LSO alleges in the Summary of Security Concerns (SSC):

- The Individual listed in his September 24, 2024, Questionnaire for National Security Positions (QNSP) that he was disciplined in August 2023 (estimated) for not attending training on a single specific date.

- The Individual omitted four disciplinary actions (listed below), occurring between May 2021 and October 2024, from his QNSP and did not correct the QNSP before being confronted about the omissions by an investigator.

- The Individual was disciplined for multiple security infractions and for missing required training:

  - Verbal counseling on May 28, 2021, for not completing his building checks properly.

  - Counseling in July 2023 for missing an assigned exercise.

  - Verbal counseling in August 2024 for failure to use his key card to access a building.

  - Written reprimand in October 2024 for failing to report missing equipment.[5]

- A source who had extensive contact with and knowledge about the Individual did not recommend the Individual for a security clearance when contacted by investigators. He reported that:

  - The Individual had engaged in multiple questionable behaviors in August 2024 and his Human Reliability Program (HRP) status was revoked;[6]

  - During a training exercise in November 2024, in which the participants (protective force employees) used laser weapons instead of live ammunition, the Individual was "unable to operate weapons systems he should be familiar with, became very overwhelmed, and was firing his weapons system at his own teammates."[7] The source added that the Individual eventually became so overwhelmed that he lay down in place and was pulled off the exercise.

  - In December 2024, the Individual told medical staff at his worksite that "he was by a building when he heard loud explosions which damaged his hearing and gave him vertigo." However, the source reported, the Individual's body camera footage showed that he was never in the reported location when he reported the incident and that there were no explosions. The source added that the Individual underwent a medical review that day and was "evaluated as not being able to perform his duties and was required to have four psychological counseling sessions."

  - The source was concerned the Individual may harm himself or others.

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[5] I note that this occurred after the Individual completed his QNSP.

[6] At the hearing, the Individual testified that he was "returned to full duty status, full duty, armed HRP status on April 7th of 2025." Tr. at 189.

[7] The alleged firing on his own teammates is commonly referred to throughout the hearing testimony as "fratricide."

- A DOE contractor psychologist (the Psychologist) evaluated the Individual on June 30, 2025, and reported that:
    - There are "indications of unreliability which involve, in part, a disavowed yet impairing psychiatric condition (anxiety), which is explicitly noted in [the Individual's] medical treatment record."
    - Although the Individual denied treatment for a mental condition with psychiatric medication, his medical record indicated the use of Cymbalta/Duloxetine for anxiety.
    - The Individual's "deceit and integrity problems . . . are not amenable to rehabilitation with the use of psychiatric medication or counseling treatments for anxiety."
    - The Individual could "inadvertently become a danger to others due to non-conformance with weapons operation and tactical training, and an inability to maintain focus and manage stress when involved in stressful training conditions."
    - The Individual's behavior and impaired functioning "represent a current psychological condition that may significantly impair his judgement, stability, reliability, and trustworthiness and calls into question . . . his ability to perform duties as a SPO and carry a firearm."

Ex. 3 at 4–6.

The Individual is alleged to have omitted information from his QNSP, committed multiple security infractions in the course of his duties, behaved in an erratic and unsafe manner in the course of his duties, and fabricated a report of an explosion on site. These concerns fall under conditions (a) and (d) of Guideline E. The Individual is also alleged to have a disavowed psychiatric condition, general deceit and integrity problems not amenable to rehabilitation, and a potential to become a danger to others due to his poor decision-making and inability to manage stress. It is also alleged that the Psychologist opined that the Individual had a current psychological condition that may impair his judgment, stability, reliability, or trustworthiness. These concerns fall under conditions (a)[8] and (b) of Guideline I. The LSO's security concerns under Guideline E are justified. The security concerns raised under Guideline I, as I explain *infra*, are not.

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

[8] Guideline E condition (d) and Guideline I condition (a) include the caveat that the behavior not be covered under another guideline. Here, the Individual's history of rule violations and security infractions in the course of his duties at a secure DOE site, as well as the accusations of fratricide arising from the November 2024 training exercise, are the basis for the Guideline E condition (d) concerns. His general issues with the ability to manage stress are the basis for the Guideline I condition (a) concerns. While the two sets of facts are related and somewhat similar, they represent separate concerns.

consideration of all of 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines at ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 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.

IV. FINDINGS OF FACT

The Individual's background investigation uncovered several derogatory facts about the Individual. On his September 24, 2024, QNSP, the Individual reported that in August 2023 (estimated), his current employer gave him "coaching and counseling for not attending a training on a single specific date." Ex. 10 at 22. He marked on the QNSP that he had no other discipline in the preceding seven years to report for that employer. *Id.* Official personnel records obtained subsequently from his current employer listed one disciplinary action: an "Oral Reminder" for "Inappropriate Behavior" in May 2021. *Id.* at 59–60. The description of the behavior stated "You annotated on your security check sheet that you had conducted a security check of a security area identified on your check sheet. A review of the cameras identified that you did not complete the security check as annotated on your []check sheet, falsifying an official record." *Id.*

Subsequently, during his Enhanced Subject Interview (ESI) conducted by an investigator on November 25, 2024, the Individual admitted to the following, as well as the disciplinary action he listed on his QNSP:

- Counseling in July 2023 for missing an exercise;
- Written disciplinary action in October 2024 for failing to report a missing magazine of live ammunition as required;
- Verbal counseling in May 2021 for failing to conduct a building check; and

- Verbal counseling in August 2024 for failing to use his key card to check into a secure area.

Ex. 10 at 55–58. When interviewed as part of the background investigation, the Individual's supervisor recommended him for a security clearance, but stated that the Individual had had write-ups or disciplinary actions in the past that he could not recall with specificity. *Id.* at 60. He recommended talking to a certain higher-level supervisor for more complete information on the Individual's employment issues. *Id.*

The higher-level supervisor did not recommend the Individual for a "position involving the national security due to [his] erratic behavior at work, and his decline in mental health over the last few months." Ex. 10 at 63. He alleged the following disciplinary events the Individual received:

- Oral counseling on August 29, 2022, for illegally parking at the visitor's center while getting breakfast; his car was blocking an access road.

- Written warning on October 29, 2024, for failing to report a lost weapons magazine after a training exercise:

  > [The Individual] was on video when he realized his magazine was missing [and was] speaking with another [SPO] and telling the officer his magazine was missing. The other Officer advised the [Individual] to report it, and the [Individual] informed the other Officer that he thought the leadership was messing with him. . . . [The Individual] did not report that magazine as missing until 0700 the following morning. . . . [The Individual] was written up for indications of a deceitful nature, irresponsibility in his duties, and failure to follow directives following this incident.

- Written disciplinary action November 17, 2023, for attendance issues. The Individual called out of work for illness or family issues on March 29, July 18, and September 23–24, 2023. He missed a weapons qualification on October 12, 2023, even though notice was posted on the training board and the Individual received a text message notification. The Individual missed a large-scale performance test on November 8, 2023, which was also posted to the training board and for which he also received a text message notification. The Individual "made excuses that did not make sense for missing the qualification and the performance test."

- "Write-up"[9] on May 23, 2021, for falsifying an official record. The Individual indicated that he conducted a required check, but a review of video footage found that he did not complete the check.

[9] Because the official disciplinary record listed this incident as an "Oral Reminder," I find that this discipline was verbal, not written.

- Written disciplinary action on September 18, 2024, for accessing a building improperly. The Individual "was supposed to gain entry on his key card by registering with [building owner] to be able to access the building." The Individual used physical keys, rather than a key card, to access the building on September 12 and 14, 2024. He attempted to enter the building "with a group of other coworkers on 09/18/2024 and could not use his physical key as there were others there." His lack of access was reported and it was discovered that he had been improperly entering the building.

Id. at 63–64. The higher-level supervisor also described an alleged incident during a force-on-force training on November 6, 2024, where the Individual was unable to operate weapons he should have been familiar with, fired laser weapons on teammates, and "eventually became so overwhelmed that he just laid down in place and was pulled off the exercise." *Id.* at 64–65. The higher-level supervisor described another alleged incident in which, on December 2, 2024, the Individual reported to medical that he was "by a building when he heard a loud explosion which damaged his hearing and gave him vertigo. A review of the [Individual's] body cam footage showed that the [Individual] was never in the reported location when [he] reported the incident, and there were no explosions." *Id.* at 65. That day, during a medical evaluation requested by his leadership, the Individual was deemed not able to perform his duties and required to have four psychological counseling sessions. *Id.* The higher-level supervisor expressed concern for the Individual's mental and physical health and was worried that he may be a danger to himself or others. *Id.* He also stated that though the Individual often mentioned that leadership was "after him," he was unable to give an example of that when asked to provide one. *Id.*

A Personnel Security Specialist with the LSO testified that he was the analyst assigned to the Individual's case. Tr. at 16. The Personnel Security Specialist testified that when reviewing the Individual's QNSP, he noted that the Individual admitted to receiving verbal counseling for a missed training event. *Id.* at 17. Reviewing the results of the ESI, the Personnel Security Specialist discovered four additional disciplinary actions—the May 2021, July 2023, August 2024, and October 2024 disciplinary actions—that the Individual had not listed on his QNSP. *Id.* at 18. The Personnel Security Specialist testified that these omissions, along with a pattern of other disciplinary actions and concerning behavior reported by sources, led him to conclude that security concerns existed under Guideline E. *Id.* at 26–27. Based on reports of unreliable and erratic behavior, the Personnel Security Specialist also developed concerns under Guideline I and recommended a psychological evaluation. *Id.* at 31–34.

The Psychologist evaluated the Individual on June 30, 2025, and issued a report on his evaluation on July 10, 2025. Ex. 11 at 1. The Psychologist was asked to answer the following questions about the Individual:

1. Determine whether [the Individual] is a danger to himself or others based on the multiple disciplinary actions between May 2021 and October 2024, the reports of his dangerous and erratic behavior during a training exercise in November 2024 where he was unable to operate a training weapon properly, engaged in fratricide, and disengaged from the exercise by lying down, and a report of not being found fit for duty in December 2024 after a potential false report of a medical condition.

2. Determine whether [the Individual's] reported behavior during a training exercise in November 2024, and report of not being found fit for duty in December 2024 represents a current psychological or emotional health condition that may significantly impair [the Individual's] judgement, stability, reliability, or trustworthiness?

3. Determine if [the Individual] currently has a psychological or emotional health problem that may significantly impair his judgement, stability, reliability, or trustworthiness and calls into question his ability to perform duties as a Security Police Officer (SPO) and carry a firearm.

4. If not rehabilitated or reformed, what type of treatment and length of time would be necessary for adequate evidence of rehabilitation or reformation?

Id. He performed a "whole person" assessment, including psychological testing,[10] and found a pattern of non-compliance with work directives and behaviors that raised questions about deception and stress handling. Tr. at 279–81. During his clinical interview with the Individual, the Individual displayed a profound lack of insight into the seriousness of his work deficits and his own performance. Ex. 11 at 5. His thought processes were within normal limits with no evidence of paranoia or hallucinations, but certain self-reported information was discrepant from the information provided to him by the LSO. *Id.* The Individual expressed surprise about why he was being evaluated and regarded some of the feedback from his command as "unfair" or inaccurate. *Id.* Regarding the November 6 training exercise, the Individual told the Psychologist, "I felt like I did awesome," and rated his own performance an 8 out of 10, despite acknowledging his command would likely rate him a 3 out of 10. *Id.* He told the Psychologist he was not pulled from the exercise—which the Psychologist noted was discrepant with his supervisor's account of the November 6 exercise—and admitted that a case could be made for the inadvisability of throwing simulated grenades near one's own teammates, which he was alleged to have done during the November 6, 2024, training exercise. *Id.* at 5, 7. For the incident involving the missing magazine, the Individual told the Psychologist that he waited several hours to report the magazine as missing because he was concerned about negative repercussions. *Id.* at 8. The Individual denied making a false medical report about explosions causing vertigo, and was unsure why others at work suspected he had done so. *Id.* at 12–13. When asked at the hearing why, where the Individual and the higher-level supervisor provided differing accounts he believed the higher-level supervisor over the Individual, the Psychologist testified that he had seen the Individual deflect, justify, and minimize flaws, and he had not had that experience with the higher-level supervisor. Tr. at 310. He then testified that had no experience with the higher-level supervisor apart from reading the

[10] The Psychologist administered the following tests, listed with the acronyms often used to refer to them:

- Personality Assessment Inventory (PAI)
- Paulhus Deception Scales (PDS)
- Alcohol Use Disorders Identification Test - (AUDIT)
- Beck Depression Inventory (BDI)
- Beck Anxiety Inventory (BAI)
- Adverse Childhood Experience Questionnaire for Adults (ACE)
- Columbia-Suicide Severity Rating Scale (C-SSRS)

Ex. 11 at 4.

investigator's notes of his report.[11] *Id.* ("If I've ever met the person or know them, I certainly don't know it. I just know it as a name on the report.") Tr. at 309–10, 312. He added that he had seen enough from the Individual to raise questions about the Individual's ability to follow rules and behave safely. *Id.* at 340–41.

The Individual denied suffering from depression, anxiety, suicidality, or any type of mental health condition. Ex. 11 at 6–7, 11. He told the Psychologist that he viewed treatment of mental health conditions "as a stigma." *Id.* at 9. While the psychological testing administered at the evaluation did not show elevated scores for depression or anxiety, it did show elevated scores for defensiveness, which could affect the validity of the test scores. *Id.* at 10. The Psychologist opined that the Individual's response style "reflected the potential for moderate defensiveness and proneness to employ denial and repression when dealing with problems," which could hinder effective problem-solving. *Id.*

The Psychologist did not review, or request, the Individual's medical records from HRP or his primary care doctor. Tr. at 328–30, 339. He did ask the Individual, during the clinical interview, to access on his phone the conditions and medications lists on his patient portal so he could "have a glance at some of the medical information." *Id.* at 288–89. He testified that the information he saw on the Individual's phone was not "a comprehensive review of every history of medical treatment over a period of years," but more "like, well, I'm seeing, you know, this specialist, that specialist." *Id.* at 316–17. The Psychologist did not indicate in his report or at the hearing that he had seen evidence of the Individual seeing a mental health specialist, nor did he indicate seeing an anxiety diagnosis in the Individual's list of conditions. He did note that the Individual was taking Cymbalta, which he stated was listed as treatment for anxiety. *Id.* at 317. The Individual told the Psychologist that he was prescribed the medication off-label for pain (which he later specified was myalgia pain) and later added that the anxiety rationale was given because when he began taking it in 2011 or 2013, anxiety was the only approved use of the drug, so the system defaulted to that.[12] Tr. at 178, 290. The Psychologist opined that there was "evidence to indicate the presence of anxiety symptoms that impair [the Individual's] work functioning." Ex. 11 at 13. The Psychologist cited reports of the Individual's poor stress management and concerning behavior at work, his repressive style of coping, and his prescription medication as evidence of anxiety symptoms. *Id.* at 7.

The Psychologist noted that the Individual had recently attended eight counseling sessions, which was more than the four required by his employer, but he did not see adequate evidence that this resolved his anxiety or integrity issues, stating "[t]he persistent lack of insight, tendency to minimize responsibility, and externalize blame is a formidable hindrance to successful rehabilitation, especially when combined with demonstrable integrity issues." Ex. 11 at 6, 12. The Psychologist recommended that the Individual continue outpatient counseling and consult a

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[11] I note that the lower-level supervisor did not corroborate the higher-level supervisor's account of the November 6 training exercise, which does not help the credibility of that account, given the extreme behavior alleged.

[12] While there was evidence that the Individual was prescribed a medication that could treat anxiety, there was insufficient evidence presented to show that the prescription was intended to treat anxiety specifically. Ex. 11 at 6; tr. at 178, 326.

physician or psychiatrist about medication to mitigate anxiety symptoms. *Id.* at 13. However, the Psychologist also concluded that such treatments were not expected to resolve the underlying integrity issues involving deceitful behavior and willful violation of work directives. *Id.* at 11, 13. The Psychologist concluded that the Individual had a psychological or emotional health problem, specifically anxiety,[13] that could significantly impair his judgment, stability, reliability, or trustworthiness and which called into question his ability to perform SPO duties and carry a firearm. *Id.* at 12–13.

After receiving the Psychologist's report, the Personnel Security Specialist found his concerns about the Individual's mental health validated and made his final recommendation to suspend the Individual's clearance. Tr. at 52. The Personnel Security Specialist stated that his adjudicative process involved reviewing the entire investigative file, including the QNSP, ESIs, and source reports, and making a risk-based decision based on the totality of the information. *Id.* at 39–44. He did not do the actual investigation, but he could request further investigation. *Id.* at 39. He testified that he made a risk-based analysis, not a factual determination, and in this case he did not need further factual investigation about the incidents described by the background sources. *Id.* at 43–44, 48. He believed the information he had was sufficient for him to identify an unmitigated security concern, and the Psychologist's report "added another layer to that risk assessment." *Id.* at 48, 52–53.

At the hearing, the Individual testified that he believed the allegations of not reporting disciplinary actions and of actions committed during the November 6 exercise were mischaracterized and misrepresented. Tr. at 129.

Regarding the failure to report disciplinary actions, the Individual stated that he did not consider verbal counseling on May 28, 2021, for not completing building checks to be a formal disciplinary action requiring reporting, as he was allegedly "promised there would be no disciplinary action." Tr. at 138–39. He testified that he did report a missed exercise in July 2023 on his QNSP but disputed the circumstances, stating that the schedule was not properly posted. *Id.* at 139–40. He admitted, however, that all the scheduled trainees attended except him. *Id.* at 140. He testified that he also missed another training exercise around that time, claiming that the schedule was never posted and that the other trainees learned about it by word of mouth. *Id.* at 140–41.

Concerning the August 2024 failure to use his badge to access a secure area of a building, the Individual testified that this gave rise to an informal discussion, which was not a disciplinary action. Tr. at 141–42, 164. He testified that he had been out on short-term disability and had forgotten that there was a badge reader for the door; he used a physical key to unlock the door and enter on two occasions. *Id.* at 142–43, 165. On a third occasion, he remembered to try his badge and discovered that he did not have access to that secure area. *Id.* at 165. He testified that he was denied access because of a "major training requirement within the system." *Id.* at 166. It is unclear whether he entered the area as a part of his regular job duties.

The Individual described receiving oral counseling in August 2022 for "illegally parking in the visitor center." Tr. at 150. He testified that a background source had used "some heavy language"

[13] The Psychologist did not, however, diagnose the Individual with an anxiety disorder. Tr. at 318–20.

when describing that behavior as blocking access to a road. *Id.* at 150–51. He confirmed that he was "for sure illegally parked," but described it as "such a minor incident." *Id.* at 151.

The Individual acknowledged that he received a written reprimand in October 2024 for failing to report a missing magazine but stated he reported it to the investigator as occurring after his QNSP submission. Tr. at 143, 151. The Individual claimed that he asked management for his magazine, which had had been taken from him prior to starting an exercise. *Id.* at 151–52. He further claimed that management was taking a long time trying to find the magazine, so he stepped aside and left without the magazine because "a lot of people were behind me and I wanted to get out of the way." *Id.* at 152. He testified that when he "rediscovered" that he was missing a magazine, he "knew I didn't drop the magazine. I knew there was no sense on even searching for it. I knew that management still had it." *Id.* The Individual testified that later that night, he told a colleague identified in this Decision as SPO 2 about the situation and that SPO 2 told him he may want to report the situation. *Id.* at 153. He testified that he told SPO 2 he did not trust his manager and that he was afraid that if he reported the missing magazine, management would call in everyone to search, waking them up in the middle of the night. *Id.* He testified that he knew his colleagues would be back in "a couple more hours and then I could just get it back from them then." *Id.* He testified that "it just seemed logical." *Id.* He admitted he made the wrong decision by not reporting it immediately but thought it was the right decision at the time to avoid a disruption. *Id.* at 152, 155. The Individual further testified that his supervisor must have dropped the magazine, not him. *Id.* at 154. He admitted that it was his responsibility to account for all his ammunition at the end of a shift and that missing ammunition was supposed to be reported immediately. *Id.* at 154–55. He also admitted that there was not an exception in the policy allowing reporting later to avoid waking others in the middle of the night. *Id.* at 155. He testified, "I was afraid of making people mad at me for having them being called in the middle of the night." *Id.* at 239. When asked about committing a security infraction to avoid making his colleagues mad, he responded, "I don't think it was a security infraction." *Id.* Regarding his manager, the Individual testified, "I did trust him, but I just felt like he would make a big deal out of it, and I made the mistake." *Id.* at 155.

The Individual testified that his decision to substitute his judgment for following set rules "shows that I kind of think outside of the box sometimes, and it can get me in trouble." Tr. at 156. He testified that thinking outside the box was both the strongest and weakest parts of his personality:

> I've always had the ability to think critically and to be able to think on my feet for myself. Despite being instructed or taught to do it a certain way, I always try to find ways to do it better. I am the type of person who I feel is able to establish some of these protocols that you read about to be taught. And I believe that I'm somebody who can actually find better ways of doing things.

Id. at 236.

The Individual admitted to being given "a piece of paper" in November 2023 coaching and counseling him about attendance issues. Tr. at 157. Initially, he asserted that it was not a written disciplinary action, but shortly after that, he admitted that it could be called a disciplinary action. *Id.* He testified that "the actual reason why I received the discipline or, well, the coaching counseling" was that he had missed a performance test, but the document also discussed his having missed a weapons qualification earlier that year. *Id.* at 158.

Regarding falsifying an official record by stating he had conducted a building check that he had not actually conducted, the Individual testified, "Now that sounds pretty serious. However, this is the one that I was brought in and I was told, listen, there is no disciplinary action resulting of this." Tr. at 158–59. He testified that he "just got an email that had a form or wording in it saying that my, and the way I took it, on reading the email, my actions could be perceived as falsifying an official record. However, what happened was, is I just forgot to do the check." *Id.* at 159. He testified that he did the paperwork ahead of time and that the incident was being taken out of context and "weaponized to make it look like I falsified an official record. But I didn't do it intentionally. . . . I marked on my timesheet the times that I was going to do my check and I just forgot to do one of them." *Id.* at 160–61. He added that "[i]t looks bad. But it happens to everybody." *Id.* at 161.

Regarding the November 6, 2024, training exercise, the Individual testified that he performed very well and denied intentionally firing a laser weapon or throwing dummy grenades at his team. Tr. at 172, 208. He attributed the "fratricide" incident to his machine gun accidentally bumping a wall, which made the gun's laser go off. *Id.* at 173–74. He also attributed it to a grenade taking a "bad bounce" off something in the way of the grenade's arc when he threw it past his teammates while standing some distance behind them. *Id.* at 173–74, 175. He testified:

> I was throwing a grenade past them. Not really over them, but past them. And the one that took the funny bounce hit something in the air. It just ricocheted off of that and it didn't make it all the way to my intended target area. But it made it where—it made it safely away enough.

Id. at 175. The Individual claimed that SPOs at his site are not trained in the use of grenades beyond their basic function. *Id.* at 175–76. He stated that "all of the interior video footage of me specifically was either destroyed or corrupted," but claimed that it would have exonerated him. *Id.* at 195–96. The Individual rated his performance in that exercise as an "[e]ight or nine out of ten." *Id.* at 208. He added, "I thought outside the box," and "I did a lot of great things." *Id.* He testified that he was seen to have behaved erratically because he was trying to get the attention of someone in his line of fire. *Id.* He claimed that his machine gun malfunctioned, so he "ripped it apart, . . . slapped it back together and got back up on site." *Id.* at 209. He testified that "as I was sitting there waiting, about two or three minutes after that, the exercise just ended. So, I mean, I did an amazing job to be honest with you." *Id.*

Regarding the being sent to medical after reporting an explosion, the Individual disputed that he reported an explosion, stating it was a steam pipe release in September 2024 that damaged his hearing, and that there was no body camera footage because they do not wear them; he claimed surveillance footage confirmed his location. Tr. at 168–71. He testified that he continued hearing loud steam pipe releases and saw a maintenance crew working on the pipe during his shift. *Id.* at 169. He testified that he confronted a supervisor that night about the continued noise and told him a work crew had been sent to handle it. *Id.* at 170. The Individual testified that the supervisor said he had not gotten around to sending out a work crew. *Id.* He testified that someone else had sent the workers because someone else had also reported the noise. *Id.* It was not clear why the Individual confronted his supervisor despite having seen a maintenance crew working on the steam pipe. The Individual testified that the derogatory information the higher-level supervisor gave to the investigator related to this incident was in retaliation for his having reported an issue with the steam pipe. *Id.* at 146. The Individual testified that he expected to be sent to medical for evaluation the day he reported the steam pipe issue, but he was not, so he "eventually [] got to reporting it up to medical." *Id.* at 170–71. The Individual testified that the incident occurred throughout the day and night on September 18, 2024, that he escalated his reporting to the site's safety office on October 22, 2024, that he reported to medical on November 18, 2024, and that he "filed the actual safety report" on December 3, 2024. *Id.* at 216, 222. The Individual testified that he did not go to medical immediately because he did not detect any effects on his hearing at the time and his vertigo ended as soon as the initial noise stopped. *Id.* at 222–23. He testified that at some point he had a hearing exam that showed a "significant drop in my ability to hear, but I can't really tell the difference." *Id.* The Individual testified that he was referred to psychological counseling for marital issues and because "the psychologist felt like I was self-isolating and just needed somebody to talk to," disputing the inference that the recommendation of psychological counseling was related to his reporting of the steam pipe release. *Id.* at 172.

Concerning Guideline I, the Individual disputed having an anxiety condition, stating that a prescription for Cymbalta was for myalgia pain, and the anxiety notation in his medical record was a system default error. Tr. at 178. He disputed the Psychologist's opinion, claiming it was based on false information from a single source given in retaliation for the Individual reporting the steam pipe release noise. Tr. at 144, 146, 179–80. The Individual testified that his site's occupational medicine doctor had recommended that he attend four counseling sessions and that he attended eight sessions in total. *Id.* at 211–12. He testified that he enjoyed the therapy because he usually did not have someone he could talk to. *Id.* He testified that he had tried a few times to follow up with the counselor he had seen for his recommended sessions, but she was "unresponsive." *Id.* at 206. He added that he did not feel like he needed counseling, but it would just be for him to have someone to talk to. *Id.* He testified that he did not currently have a treatment plan and was not taking medication specifically for anxiety. *Id.* at 212. He testified, "I do not have anxiety. I'm not being treated for anxiety." *Id.* at 178. *See also id.* at 202 ("And just for the record, I do not have anxiety and I am not being treated for anxiety.").

The Individual entered statements of support from two colleagues into evidence. Ex. B; Ex. C. The statements described the Individual as emotionally stable, reliable, and professional. Ex. B at 1; Ex. C at 1. They also stated that though the purported author had not witnessed the events described in SSC, those events appeared inconsistent with their experience of the Individual. *Id.* The Individual stated that he had prepared the written statements in the record attributed to his coworkers. Tr. at 230. He testified that he shared statements with three colleagues and all except one approved them for him to send in. *Id.* at 230–31. When asked why he had not had the coworkers sign the statements, the Individual testified:

> I guess because of difficulty of having it done, [one coworker] was willing to have it signed and notarized. But having them respond, all of them respond to actually, you know, typing it up and sending it and all that stuff. They were kind of just—

> they didn't seem proactive about it. So I felt like I needed to give them a little bit of assistance. And I said, hey, is this good? And they said, yeah, that sounds good.

Id. at 233. The Individual then testified that he had actually never asked the coworkers to sign the statements, only asked for their approval. *Id.* at 233–34.

SPO 1 testified that he had known the Individual since 2019 and considered their relationship both professional and personal. Tr. at 77–78. They had only worked together about once per month in the preceding year and a half, excepting four months during which SPO 1 was on leave. *Id.* at 101–02. SPO 1 stated that he had never seen the Individual more or less stressed than any other teammate in their high-stress profession and believed the Individual performed his duties as well as any other SPO. *Id.* at 81. He testified that he believed the Individual was reliable and trustworthy, citing the Individual's willingness to help teammates and his performance in training exercises. *Id.* at 82–85. SPO 1 testified that the Individual was open with him about having to do retraining and a medical review after an incident involving throwing fake grenades and dropping a magazine, which he believed was an "anomaly" and not a pattern. *Id.* at 87–88, 92, 94–95. He testified that his knowledge about the grenade incident came from the Individual and from others at the site. *Id.* at 113. He testified that the majority of people who had discussed the incident said that the grenade did not ricochet. *Id.*

SPO 2 testified that he was present for the November 6, 2024, exercise, but not in the same area as the Individual. Tr. at 245–46, 259. He also testified that he was with the Individual when he discovered his magazine was missing and that he advised the Individual to report it. *Id.* at 247. SPO 2 testified that the Individual did not trust his supervisor because he felt management was against him and treated him unfairly due to his repeated use of short-term disability. *Id.* at 248–50. SPO 2 testified that the laser guns used in the exercises cannot fire without the trigger being pulled, unless it is a "runaway gun" that fires an entire cartridge in rapid succession. *Id.* at 263–64. He further testified:

> [I]t would be frowned upon deeply that if you throw a grenade from behind me. That would make me kind of mad. Yeah I would not, I would not appreciate you throwing a grenade behind, from behind me because of the distance that they need to travel.

Id. at 265. He testified that he had not received training on which situations were appropriate for grenade use. *Id.* at 265–66.

The Psychologist testified that the Individual "was too willing to operate according to his own set of rules and not the ones that are required." Tr. at 346. He believed the Individual may persist with "out of the box" thinking that could result in poor decision-making, rule-breaking, and potentially dangerous actions. *Id.* at 282–83, 293–94, 340–41. The Psychologist still had concerns about the Individual's trustworthiness and reliability after hearing the Individual's testimony, stating that he had not seen a significant change in the Individual's insight since the initial evaluation. *Id.* at 300–01, 308, 310, 321–22, 341. He testified that it had taken the Individual a long time during his testimony to admit any wrongdoing on his part instead of blaming his behavior on "defective information." *Id.* at 314. The Psychologist believed the Individual repressed his stress and did not have an appropriate emotional outlet, which could result in maladaptive behavior in the future. *Id.* at 311–13. He noted that the Individual had cited fear of social repercussions and upsetting others as reasons he did not comply with rules; he opined that this showed "a deficit in terms of judgment, decision making and a willingness to hold himself accountable to certain rules." *Id.* at 284. The Psychologist recommended that the Individual participate in "reality therapy" so he could better embrace the truths of what happened at work and the detrimental roles of stress, anxiety, and "out-of-the-box" thinking. *Id.* at 295–96.[14] The Psychologist also testified that he did not believe the Individual was a danger to himself or others. *Id.* at 292.

When asked if he believed the Individual still had a mental or psychological condition that impaired his judgment, reliability, trustworthiness, or stability, the Psychologist testified that he believed the Individual was "subject to symptoms of anxiety that are stress-related, that can sometimes lead to poor decision-making and may cause him to deflect things that he needs to learn from . . . rather than examining himself closer." Tr. at 349. He believed that the Individual remained vulnerable to situational spikes in anxiety, which would be more challenging to deal with because the Individual "guard[ed] against acknowledging" those difficulties. *Id.* at 294.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. "Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." Adjudicative Guidelines at ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

[14] At the hearing, the Individual repeatedly acknowledged that he had made mistakes in regard to his disciplinary matters. *See, e.g.,* Tr. at 155–56, 162, 214, 314. As previously stated, the Psychologist's assessment that the higher-level supervisor's report is the truth is based on the uncorroborated information in the investigator's report. I cannot say with any certainty that the higher-level supervisor's account November 6 incident is truth any more than I can say it is false. Therefore, I do not accept the Psychologist's opinion about the need for reality therapy because there is insufficient evidence in the documents provided to him, and to the court, to support a finding that the Individual is not accepting "the truth."

While the allegations in the SSC, if taken as true, justify the invocation of Guideline I, I find otherwise after considering the evidence.

Concerning condition (b) requires an opinion from a duly qualified medical professional, and I am not convinced by the Psychologist's assessment of the Individual. The Individual stated that he does not have anxiety, provided a plausible explanation for his Cymbalta prescription, and was cleared by HRP to return to duty and carry a firearm. In addition, the Individual's psychological testing results did not indicate that the Individual had symptoms of anxiety or depression. While the Psychologist noted the Individual's high defensiveness scores, he did not assert with any certainty that they invalidated the other test results, saying only that there was the *potential* for moderate defensiveness. Moreover, the Psychologist did not request the Individual's medical records from his primary care provider or from HRP while relying heavily on the uncorroborated report of the higher-level supervisor to support his conclusion that the Individual suffered from deceit and integrity problems. Taken together, these facts do not, in my view, support a finding that the Individual has a psychological condition that impairs his judgment, trustworthiness, reliability, or stability.

The basis for the concerns raised under condition (a), as I determined *supra*, is the Individual's alleged issues with the ability to manage stress. Those alleged issues stem largely from his alleged behavior during the November 6 exercise. As discussed above, I do not find that the November 6 exercise allegations are enough to show a general difficulty managing stress sufficient to raise a concern under condition (a). For the foregoing reasons, I find that there is inadequate evidence to support the presence of security concerns under Guideline I.

The Individual argued at length during the hearing that the basis for the security concerns raised came from a single source and, therefore, was not sufficient to justify those concerns. However, as seen in the reports of the background investigation, multiple sources—the disciplinary action in the Individual's personnel file, the lower-level supervisor's reports that the Individual had had disciplinary actions, and the higher-level supervisor's report—provided information about the Individual's history of disciplinary action at work, which are sufficient to raise a Guideline E concern. The Individual also confirmed much of the higher-level supervisor's report in his own ESI. Thus, those security concerns were not based on the account of a single source. Moreover, the threshold for raising a concern is not definitive proof, but simply that the facts available show that granting an individual access authorization would present an unacceptable risk to the national security, as pointed out by the Personnel Security Specialist. Once DOE has met that burden, the burden shifts to the Individual to bring forth sufficient evidence to mitigate the concerns. The Individual has failed to do so in this case.

A. Guideline E

Conditions that could mitigate Guideline E concerns include:

(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) The information was unsubstantiated or from a source of questionable reliability; and

(g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17. None of the mitigating conditions apply. Mitigating condition (b) cannot apply because the Individual has not alleged that he was instructed by legal counsel or a person advising on the security clearance process not to list certain disciplinary events on his QNSP, and mitigating condition (g) is not germane to the allegations raised in the SSC. The allegations listed in the SSC support the invocation of Guideline E. However, after hearing the Individual's testimony, I also have significant concerns under the whole person concept that contribute to my overall decision.

The Individual did not admit to having received disciplinary counseling for several violations until the ESI. While there may be some merit to the Individual's claim that there was no official discipline issued, some of the counseling was accompanied by written materials outlining that he had committed rule violations. Moreover, the Individual's personnel file contained a record of verbal counseling for falsifying an official record. Crucially, the Individual's QNSP disclosure itself was not consistent with the truth because he specified he missed a single training in August 2023, when in reality he missed multiple trainings in 2023 and admitted such at the hearing. Given the timing of the ESI, it is unlikely that the Individual was confronted with the facts of the three disciplinary actions he is alleged to have omitted from the QNSP[15] before he disclosed them to the

[15] I count the alleged omissions as three instead of four, since, as noted *supra*, the October 2024 disciplinary action occurred after the Individual completed the QNSP.

investigator because the investigator did not learn about them before the ESI. However, his disclosure on the QNSP stating that he missed a single specific training exercise in 2023 was unambiguously misleading, which I take into account when evaluating the Individual's whole person and assessing his overall credibility. With this in mind, there is a degree of doubt as to whether the Individual did not include on his QNSP the May 2021, July 2023, and August 2024 disciplinary actions with the intent to deceive.

Drawing on the Individual's testimony, when advised by a trusted colleague that he should follow policy and immediately report a missing magazine of live ammunition, the Individual intentionally concealed the information until the following day, citing fear of upsetting others as his motivating rationale. This is concerning for multiple reasons. First, the Individual intentionally acted contrary to security policy. This is the type of behavior the security clearance review process is designed to predict and circumvent. Second, the Individual committed the security violation so that his peers would not be upset with him. This reveals a vulnerability to peer pressure and social coercion that can pose a risk to the national security.

The Individual's testimony shows that, whether intentionally or not, he circumvented security protocols to access an area in which he was not authorized to be. The issue is not that others did not prevent him from doing so or that he was technically able to gain access with physical keys. The issue is that he entered an area he was not allowed to enter, as evidenced by the fact that his badge did not grant entry when he eventually tried to use it and by the Individual's admission that he was denied access due to missing a training requirement. This is another example of the type of behavior security clearance review process is designed to predict and circumvent. This behavior demonstrates that the Individual cannot be trusted to protect the integrity of restricted spaces. Moreover, the Individual's assertion that he had performed a building check when he had not done so adds an additional layer of concern about the Individual's ability to protect restricted spaces.

The Individual's actions and statements, when considered as part of the whole person concept, do not suggest that the Individual takes responsibility for his actions when he can plausibly deflect blame or claim ignorance. Therefore, while the LSO's allegations are not supported by such irrefutable evidence that there can be no question as to why the Individual did not list those disciplinary actions on his QNSP, there is enough evidence that, when considered in the light of the Individual's whole person, it is plausible—if not likely—that these were deliberate omissions. The burden then shifts to the Individual to prove that he did not deliberately omit the disciplinary actions from his QNSP. He has failed to do so here. Having reached a finding on whether the Individual made the omissions, I turn to the mitigating conditions.

Condition (a) does not apply because, while there is insufficient evidence to show that the Individual was confronted with the all the facts before admitting to them, there is sufficient evidence to introduce doubt about whether he volunteered the information about the May 2021 discipline. The notes from the ESI do not say he volunteered the information, as they do for information about the August 2024 counseling, and the investigator received that information from the Individual's personnel file prior to the ESI. The Individual's lack of candor in his QNSP disclosure regarding the number of missed training exercises he was disciplined for contributes to a whole person concern about the Individual's honesty, which does nothing to mitigate the doubt raised about the ESI disclosures. All doubt must be resolved in favor of the national security, so mitigating condition (a) does not apply. Moreover, mitigating condition (a) is insufficient to mitigate all the Guideline E concerns because it does not address the behavioral issues raised in the SSC.

Mitigating condition (c) does not apply. The behaviors raised in the SSC were serious security infractions involving failure to protect the integrity of restricted spaces, failure to secure live ammunition, and failure to follow security procedures. These offenses were not minor, and they continued occurring over a period of years. The Individual deflected responsibility for these offenses and did not appear to believe that violating policies that he disagreed with was problematic, leading to concerns that he will deviate from policy in the future. There is significant doubt about the Individual's ability to follow rules and reporting requirements in the future and he has not fully accepted responsibility for his past violations, saying only that each was a mistake he would not make again because, unlike when he committed the violation, he now knows what he should do in such a situation. Given the repeated nature of his violations, I am not persuaded by his assurances. Accordingly, I find that there is a likelihood that he will commit future violations. For that reason, mitigating condition (d) also does not apply.

Mitigating condition (e) does not apply because the LSO did not allege that the Individual engaged in conduct that left him vulnerable to exploitation, manipulation, or duress. Even if it had, it is apparent that the Individual's susceptibility to peer pressure and fear of social consequences can lead, and indeed has led, to his committing security infractions. At the hearing, the Individual testified that he did not report the missing magazine in a timely manner because that would result in his colleagues being woken up in the middle of the night. He testified that he did not want to upset them. While he admitted at the hearing that this was a mistake, he also cast his decision in a somewhat positive light by describing the decision as "out-of-the-box" thinking that was one of his strongest, and somehow also weakest, qualities. The Individual's vulnerability to external pressure, including pressure he merely worries about rather than concrete threats, remains and presents a risk to the national security that cannot be ignored under the whole person concept.

With respect to the Individual's alleged security infractions, mitigating condition (f) does not apply, despite the Individual's argument that this administrative review proceeding is based entirely on the uncorroborated report from the higher-level supervisor. The Individual in fact admits that the security infractions occurred, which is enough to find the derogatory information substantiated. Condition (f) does apply, however, with respect to the concerns regarding the November 6 exercise and the report of an explosion. While the Individual is not the most reliable narrator, DOE did not provide any evidence corroborating the higher-level supervisor's version of events. While some of the higher-level supervisor's report was corroborated—particularly the allegations regarding the disciplinary matters—the allegations about the explosion reporting were not corroborated, and neither were the allegations regarding the November 6 exercise, particularly regarding the Individual lying down because he was overwhelmed; I would expect that kind of behavior to be known and confirmed by other witnesses. DOE's evidence in support of the security concerns regarding the November 6 exercise and the explosion report are not sufficient to justify their inclusion in the SSC. However, the security violations themselves provide ample basis for finding the Guideline E concerns have not been mitigated. The Individual has admitted to breaking the rules in a way that harmed the national security and did not show adequate evidence for me to be certain he will not do so again. Therefore, for the foregoing reasons, I find that the Individual has not mitigated the security concerns raised under Guideline E.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guideline E, but not Guideline I, of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving the Guideline E concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual.

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals