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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: January 23, 2024)
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_____)

Case No.: PSH-24-0052

Issued: April 2, 2024

Administrative Judge Decision

Phillip Harmonick, 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."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 should not be granted access authorization.

I. BACKGROUND

On April 20, 2023, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 4 at 62.² The Individual disclosed on the QNSP that he had been terminated from previous employment for time theft and had received a warning from another former employer for "being late to work." *Id.* at 33, 36. A background investigation of the Individual additionally revealed that the Individual had left an internship after the employer providing the internship was unable to contact him for three weeks, was ineligible for rehire with another former employer the Individual failed to disclose on the QNSP because the Individual left the job without providing advance notice to his employer, and had dropped out of a university he previously attended. *Id.* at 69–70, 79.

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 DOE submitted its exhibits as an exhibit notebook containing each of the exhibits. The exhibits contain a variety of non-consecutive page markings relating to documents from which the exhibits were excerpted. This Decision will refer to the pages in the order in which they appear in the exhibit notebook, as if the exhibit notebook was one sequentially numbered document, regardless of their internal pagination.

The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his prior employment. Ex. 5. In his response to the LOI, the Individual admitted to having falsified his time and attendance records in connection with prior employment and to having failed to communicate with an employer providing an internship for several weeks. Ex. 6 at 115–17.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E of the Adjudicative Guidelines. Ex. 2.

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 conducted an administrative hearing. The LSO submitted six exhibits (Exs. 1–6) and the Individual submitted ten exhibits (Ex. A–F).³ The Individual testified on his own behalf and offered the testimony of a former manager. Hearing Transcript, OHA Case No. PSH-24-0052 (Tr.) at 3, 11, 32. The LSO did not call any witnesses to testify. *Id.* at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E of the Adjudicative Guidelines as the basis for its substantial doubt 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 having been terminated from previous employment after falsifying time and attendance records, leaving an internship after having been unreachable for several weeks and failing to disclose this information on the QNSP, being ineligible for rehire with a previous employer because he “just left” without notifying the employer and failing to disclose this information on the QNSP, and failing to disclose on the QNSP that he dropped out of a university. Ex. 2. The LSO’s allegations that the Individual deliberately omitted relevant facts he was required to disclose on the QNSP and demonstrated a pattern of dishonesty or rule violations justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a), (d)(3).

III. REGULATORY STANDARDS

³ The Individual labeled five related exhibits as C1, C2, C3, C4, and C5. Thus, the Individual’s exhibit labels do not correspond to the number of exhibits submitted by the Individual.

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 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 regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

The Individual was employed in a customer service position from August 2021 to June 2022 in which he was responsible for routing calls from consumer medical devices to emergency services. Ex. 4 at 35; Tr. at 64–65. Due to the risk of emergency calls going unanswered, the Individual's employer (Employer A) maintained a strict attendance policy which required noting for disciplinary purposes an employee reporting to his or her workstation as little as one minute later than his or her scheduled start time. Ex. C3 at 1, 3. Employer A coached the Individual and issued him a warning for failing to be present at his workstation at the scheduled time on multiple occasions. Ex. C1; Ex. C2. In June 2022, the Individual resigned from his employment with Employer A to participate in an internship program with a DOE contractor (Employer B). Ex. 4 at 34–35. The Individual is eligible for rehire with Employer A. Ex. C5.

Beginning in late July 2022, the Individual stopped communicating with his manager at Employer B and did not attend work. Ex. 4 at 81; Ex. A. According to the Individual, he and his fiancée had planned to get married at this time, but his fiancée broke off their engagement shortly before the wedding. Tr. at 50–51. The Individual's manager eventually made contact with the Individual who indicated that he would attend work the week beginning Monday, August 8 when he was scheduled to deliver a presentation to senior management of Employer B. Ex. A. However, the Individual did not attend work on August 8. *Id.*; Ex. 4 at 81. On August 9, the manager contacted the Individual who indicated that he did not intend to deliver the presentation. Ex. A. The manager then informed the Individual that he "thought it was best that we end the internship" *Id.*

In August 2022, the Individual began attending a graduate studies program at a university (University). Ex. 4 at 33. The Individual dropped out of the University in October 2022 without

completing the first semester of his studies. *Id.* at 70. The Individual was attending counseling at this time for depression that predated his relational and professional difficulties. Ex. D (reflecting a letter from the Individual's counselor to the University indicating that the Individual had been receiving counseling for depression since 2020). The Individual sought to have his lack of attendance characterized as a leave of absence, but the University denied this request because he did not file a request before discontinuing attendance, complete the first semester of his studies, or provide a return date. Ex. D; Ex. F (containing an e-mail from a professor at the University to the Individual indicating that the University could not characterize the Individual's departure as a leave of absence).

In January 2023, the Individual began working for another employer (Employer C) as a safety technician. Ex. 4 at 32. In February 2023, the Individual's supervisor detected that the Individual had manually altered timesheet data generated based on his badge swipe times to make it appear as if he had arrived to work approximately one hour earlier than his badge swipe data showed on four consecutive days. *Id.* at 84, 89–91. When confronted by the supervisor, the Individual claimed that he had manually changed the data because he “piggy-back[ed] off of other [employees] to get into the building” on each of the dates, and that the badge swipe data showed him returning to the building after leaving on each date. *Id.* at 84. The Individual later admitted that he had falsified his timesheets. *Id.* at 86. On February 23, 2023, Employer C terminated the Individual's employment for timecard fraud. *Id.* at 83.

Another employer (Employer D) hired the Individual to a position in February 2023. *Id.* at 69. However, the Individual left his employment with Employer D without providing notice after being offered a position by a DOE contractor, and the Individual is not eligible for rehire with Employer D. *Id.* at 69, 79.

On April 20, 2023, the Individual submitted the QNSP in connection with seeking access authorization. *Id.* at 62. As part of completing the QNSP, the Individual certified that its contents were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* The Individual disclosed on the QNSP that Employer C had terminated his employment in February 2023 for time theft and that Employer A had issued him a warning for being late to work. *Id.* at 33, 36. However, the Individual did not disclose his employment by Employer D on the QNSP and represented that he was unemployed from February 2023 to March 2023. *Id.* at 32. The Individual also represented that he had attended the University from August 2022 to December 2022, and that he left the internship with Employer B due to “[e]nd of Summer internship.” *Id.* at 30, 34.

An investigator (Investigator) conducted a background investigation into the Individual's eligibility for access authorization. *Id.* at 66–78. The Investigator obtained records showing the Individual's employment with Employer D. *Id.* at 76. The Investigator also obtained documentation from the Individual's manager during his internship with Employer B. *Id.* at 80–81. The documentation indicated that the manager was “unable to get [the Individual] to communicate . . . and for 3 weeks had no contact [with him].” *Id.* at 81. The manager indicated that he did not recommend the Individual for employment or a security clearance. *Id.*

On June 6, 2023, the Investigator conducted an interview of the Individual. *Id.* at 67. The Investigator confronted the Individual with information that he left his internship with Employer B under unfavorable circumstances. *Id.* at 69, 80–81. The Individual claimed that he took one week off from the internship following the breakup with his fiancée and did not return to work the following Monday even after telling his manager that he would do so. *Id.* at 69. The Investigator then confronted the Individual with the information from the manager that the Individual was absent from the internship and unreachable for three weeks. *Id.* at 70. The Individual indicated that he believed that he had been absent from the internship for one week, but that the information obtained by the Investigator could have been accurate. *Id.*

During the interview, the Individual represented that he accidentally omitted his employment with Employer D from the QNSP and that “[t]here were no issues at this employment.” *Id.* at 69. The Individual also admitted that he had dropped out of the University in October 2022, not December 2022 as he indicated on the QNSP, and represented that he was unsure how he should have listed the dates on the QNSP. *Id.* at 70.

The LSO issued the Individual the LOI on August 21, 2023. Ex. 5 at 112. In his response, the Individual indicated that he had falsified timecards in connection with his employment by Employer C because he felt he had been unfairly denied the ability to take sick leave the prior week, and estimated that “[i]t was maybe 6-10 hours forged for just the week of the incident.” Ex. 6 at 115. The Individual further represented that he had lied when confronted by Employer C regarding the manual changes to his timesheet data “so that [he] could hopefully get past this bad blip and not have it happen again.” *Id.* at 116.

At the hearing, the Individual testified that he was “[s]uffering from a lot of agoraphobia” after his fiancée broke off their engagement and he did not attend the internship with Employer B because he did not want “to go out or do anything.” Tr. at 52. The Individual further testified that, after his manager made contact with him, he decided not to return to work due to “[f]eelings of embarrassment . . . for not showing up when [he] was supposed to as well as everything else going on in [his] personal life.” *Id.* at 53; *see also id.* at 19–20 (reflecting the testimony of the Individual’s manager with Employer B that the Individual had initially agreed to return to work after several weeks off but failed to return when he had agreed to do so). The Individual represented that he said that he separated from Employer B due to the end of the summer internship on the QNSP because he felt that there was a “mutual agreement” between his manager and himself to end the internship. *Id.* at 53–54.; *but see id.* at 20 (reflecting the manager’s testimony that he told the Individual “I think we need to end our internship. We won’t extend you anymore” after the Individual failed to return when he had committed to doing so).

The Individual testified that he stopped attending classes at the University in October 2022 because of feelings of agoraphobia and negative emotions related to the termination of his engagement and internship with Employer B. *Id.* at 73–76. The Individual testified that he had listed his attendance at the University on the QNSP as through December 2022, rather than when he stopped attending classes in October 2022, because he interpreted the question as pertaining to the length of the academic semester in which he attended the University rather than “when he was physically there.” *Id.* at 93.

Regarding his termination for time theft from Employer C, the Individual testified that he had contracted what he believed to be COVID-19 while employed by Employer C. *Id.* at 39, 88. He asserted that he attended work while feeling ill because he felt that his manager “kind of pressured [him]” to do so “even though [he] wasn’t feeling well.” *Id.* at 39; *but see id.* at 97–99 (admitting that he was never denied requested leave or told that his employment would be terminated if he took leave). The Individual admitted that he had “just left” work on a Friday and then falsely claimed to Employer C that he had come to work early the previous days that week after being confronted on his absence from work. *Id.* The Individual further admitted to manually changing time and attendance data based on his badge swipe history because he had “only worked there . . . a few weeks[] [a]nd [he] didn’t want to lose a job over a few hours” and “was just trying to keep in good standing with this [] manager.” *Id.* at 44, 91. According to the Individual, he only “put one or two hours” extra on his timecard on the days preceding his unexcused absence and “wasn’t trying to gain . . . by any means.” *Id.* at 40.

With respect to his separation from Employer D, the Individual testified that he received an offer to a more desirable position with another employer shortly after he was hired by Employer D and that he had notified the plant manager of Employer D that he was quitting effective immediately. *Id.* at 60–61. The Individual testified that the plant manager did not seem opposed to him quitting in that manner, that he was never told that he should work for two weeks after giving notice, and that he perceived that quitting effective immediately was more favorable to Employer D than him coming to work for two additional weeks “just to get a paycheck.” *Id.* at 60–63.

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;

- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The Investigator confronted the Individual with the fact that his separation from the internship with Employer B was for reasons other than the “End of Summer internship,” which the Individual had listed on the QNSP, and that he failed to list his employment with Employer D on the QNSP. Although the Individual did volunteer to the Investigator that he had dropped out of the University in October 2022, this admission, which came after he had already been confronted by the Investigator with the other information, is insufficient to establish the applicability of the first mitigating condition given that he did not make it until he was confronted with the other information that he omitted from the QNSP. *Id.* at ¶ 17(a).

The Individual did not allege that he omitted information from the QNSP on the advice of an attorney or other representative. Thus, the second mitigating condition is inapplicable. *Id.* at ¶ 17(b).

Each of the Individual's omissions on the QNSP, as well as the Individual's minor discipline by Employer A, ineligibility for rehire with Employer D, and termination of his studies at the University, presents a relatively minor security concern, any one of which in isolation would likely be mitigated under the third mitigating condition. However, taken together, and considered in conjunction with the Individual's excuses for his timecard theft from Employer C, the security concerns alleged by the LSO present a pattern of behavior in which the Individual has failed to demonstrate reliability and trustworthiness and has then sought to minimize or obfuscate his behavior.

From August 2021 to February 2023, the Individual was disciplined by, or separated from under unfavorable circumstances, four consecutive employers. When the Individual was confronted by Employer C with evidence of his timecard fraud, he offered implausible excuses for changing his attendance data before admitting to his misconduct. In his interview with the Investigator, response to the LOI, and hearing testimony, the Individual sought to minimize his misconduct with Employer C by referencing the relatively small number of verified hours of timecard theft for which he was fired and to excuse or justify his actions because he felt that his supervisor unfairly pressured him not to take sick leave. Similarly, the Individual has offered implausible excuses for his inaccurate responses on the QNSP, such as that he thought that the question concerning his dates of attendance of the University concerned the length of the semester in which he enrolled rather than the actual dates he personally attended the University. I find that the Individual's pattern of unreliability and dishonesty is significant, frequent, and recent, and therefore that the third mitigating condition is inapplicable. *Id.* at ¶ 17(c).

The Individual did not assert that his counseling directly related to the issues underlying the security concerns. Even if he had done so, for the reasons stated above I found that the Individual's testimony at the hearing continued to demonstrate the minimization of, and justification for, his misconduct that presented security concerns. Accordingly, I find that the Individual's irresponsible and deceptive behavior is sufficiently likely to recur that the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d).

The fifth mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is likewise irrelevant because the LSO's allegations were not based on a source of questionable reliability. *Id.* at ¶ 17(f). The final 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).

For the aforementioned reasons, I find that none of the mitigating conditions is applicable to the facts of this case. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline E of the Adjudicative Guidelines. After considering all 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 should not be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals