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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 19, 2024 ) Case No.: PSH-24-0051  
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Issued: June 4, 2024

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

**I. Background**

Sometime in XXXX, the Individual, a DOE employee, was a member of XXXXX XXXXX XXXXXX who met with XXXXX XXXXX XXXXX of a Sensitive Country (the SC). Hearing Transcript, OHA Case No. PSH-24-0051 (Tr.) at 195–96. The SC is a potential military and diplomatic adversary of the United States that deploys a large and effective espionage service both domestically and internationally. The meetings took place in the SC. While the Individual was in the SC XXXXX XXXXX XXXXX, he visited a bar in the hotel at which [he] was staying. While in the hotel bar, he met a woman (SCN-2) and exchanged email addresses with her. Four to six months after the Individual returned to the United States, he began corresponding with SCN-2 by email and telephone. During these conversations and email exchanges, the Individual and SCN-2 discussed becoming boyfriend and girlfriend and even the possibility of marriage, despite the fact the Individual was, and still is, married.

Since the Individual’s visit to the SC in XXXX, the Individual has been the subject of several counterintelligence interviews (CI) and polygraph examinations conducted by the DOE’s Office of Intelligence and Counterintelligence’s Directorate of Counterintelligence (OCI). Exhibit (Ex.)

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<sup>1</sup> 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.

4. Most of the information discussed below originates from a Summary Report, dated October 19, 2023, prepared by the OCI which appears in the record as Exhibit 4.<sup>2</sup>

On February 19, 2015, the Individual signed, dated, and submitted a Questionnaire for National Security Positions (QNSP). Ex. 5 at 1. In this QNSP, the Individual was asked: “Do you have, or have you had, close and/or continuing contact with a foreign national **within the last seven (7) years** with whom you . . . are bound by affection, influence, common interests, and/or obligation? Include associates as well as relatives, not previously listed in Section 18.” Ex. 5 at 28. (emphasis in original). The Individual responded “no” to this question. Ex. 5 at 28.

On March 14, 2016, the Individual was the subject of a polygraph examination. Ex. 4 at 1.

On March 30, 2016, the Individual was the subject of a CI in which he “provided information concerning contact with numerous non-sensitive country foreign nationals.” Ex. 4 at 1.

On March 31, 2016, the Individual contacted OCI by phone and informed OCI that he had received an email from a national (SCN-1) of the SC in association with his XXXX trip to the SC. Ex. 4 at 1. During this conversation, the Individual also claimed that he never answered this email and that there were no other reportable contacts associated with his XXXX trip to the SC. Ex. 4 at 1.

On November 4, 2016, the Individual was the subject of a polygraph examination. Ex. 4 at 1.

On August 25, 2017, the Individual was the subject of a CI. Ex. 4 at 1. During this CI, the Individual admitted that he had entered a Vault Type Room (VTR) with his cell phone on several occasions and had failed to inform his supervisor of these breaches, as required by security procedures, because he didn’t think these security breaches were important. Ex. 4 at 1. He further admitted that, on three to five occasions, he had not followed transportation procedures for Secret Restricted Data, Secret Formerly Restricted Data, and Sigma documents. Ex. 4 at 1. The Individual also admitted that he has had exchanged emails with two SC nationals, SCN-1 and SCN-2. Ex. 4 at 2. He described SCN-2 as a female who was interested in studying in the United States. Ex. 4 at 2.

On September 22, 2017, the Individual contacted OCI and stated that he was unable to find any of the emails he exchanged with SCN-1 or SCN-2. Ex. 4 at 2.

On January 5, 2018, the Individual was the subject of a polygraph examination. Ex. 4 at 2.

During the time between the January 5, 2018, polygraph examination and a June 29, 2022, CI, the Individual was investigated by the Federal Bureau of Investigation (FBI). Tr. at 250.

On June 29, 2022, the Individual was the subject of a CI. Ex. 4 at 2. During the June 29, 2022, CI, the Individual admitted that he had an eighteen-month relationship with SCN-2, whom he met

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<sup>2</sup> Exhibit 4 documents several instances where the Individual’s polygraph examinations resulted in Significant Responses (SR) to questions posed during those examinations. However, the Summary of Security Concerns (SSC) does not cite any of these SRs in support of the security concerns cited in the SSC. Nevertheless, the Individual’s attorney devoted considerable effort trying to show that the Individual’s SRs resulted from the Individual’s anxiety disorder and [communication] difficulties rather than an attempt to be deceptive.

in a hotel bar during the XXXX trip. Ex. 4 at 2. His relationship with SCN-2 continued by email, phone calls, and one letter. Ex. 4 at 2. The Individual admitted that his spouse was unaware of this relationship. Ex. 4 at 2. The Individual also admitted that he had multiple email exchanges with SCN-1. Ex. 4 at 2.

On November 16, 2022, the Individual was the subject of a CI prior to a scheduled polygraph. Exhibit 4 provides the following summary of that CI:

On 16 Nov 2022, [the Individual] was re-interviewed prior to his scheduled polygraph and provided the following additional details: [The Individual] had contact with [SCN-1] three (3) times by email (*Note: Previously undisclosed/unspecified*). During official travel to [SC] while at a hotel concierge party, [the Individual] talked with [SCN-2] and eventually asked her if she would like to be friends. [The Individual] asked her for her email address, which [SCN-2] provided. [The Individual] stated HE may have given his email to her. When asked again for clarification, [the Individual] stated HE did give [SCN-2] his email. [The Individual] stated HE did not have any further contact with [SCN-2] during his trip to the SC. Months later, [the Individual] contacted [SCN-2] by email and estimated they exchanged 12-15 emails. During the email exchanges, [the Individual] requested and obtained [SCN-2's] telephone number. HE called [SCN-2] using phone cards numerous times. [The Individual] suggested THEY could someday be girlfriend and boyfriend and they might get married. [The Individual] suggested [SCN-2] should come to the USA. [The Individual] stated HE could marry [SCN-2] after HE got to know her better. In six to seven months, [the Individual] thought they could be a couple. According to [the Individual, SCN-2] eventually declined these suggestions. When [the Individual] realized THEIR relationship would not work, [he] stopped communicating with [SCN-2]. [The Individual] stated he did not have any other contact with [SCN-2] and stated HE never made any unauthorized disclosures of any sensitive or classified information to [SCN-2]. [The Individual] stated HE had now disclosed everything and there were no other foreign national contacts. During the discussion of reportable contacts and incidents, [the Individual] related a potential counterintelligence matter involving a [DOE] coworker who had traveled to a SC. [The Individual] was not forthcoming with any details and refused to name the coworker. [The Individual] agreed to undergo a polygraph examination.

Ex. 4 at 2-3.

After receiving and reviewing this information, 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 to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded his 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), I took testimony from the Individual, his expert witness (the Psychiatrist), three friends and former colleagues, his former supervisor, and a DOE Personnel Security Specialist (PSS). The DOE Counsel submitted six

exhibits marked as Exhibits 1 through 6. The Individual submitted the following three exhibits, marked as Exhibits A, B, and E:<sup>3</sup>

Exhibit A consisted of the Individual's Performance Reviews for the years 2020–2023.

Exhibit B is a copy of the Psychiatrist's Curriculum Vitae.

Exhibit E is a copy of a report, dated April 29, 2024, prepared in anticipation of this proceeding by the Psychiatrist. In this report, the Psychiatrist states that the Individual met the criteria for a diagnosis of Other Specified Anxiety Disorder, as set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition - Text Revision* (DSM-5-TR).

## **II. The Summary of Security Concerns (SSC)**

Attached to the Notification Letter was an SSC, in which the LSO raises security concerns under Adjudicative Guideline E (Personal Conduct) citing the Individual's: (1) refusal to provide the identity of a coworker he accused of potential involvement in a counterintelligence matter; (2) involvement in a romantic relationship with a foreign national of a sensitive country; (3) concealment of that relationship and his contacts with another foreign national of a sensitive country; (4) omission of information from a QNSP; (5) repeated transportation of a cell phone into a VTR; and (6) his repeated failure to follow transportation procedures for Secret Restricted Data, Secret Formerly Restricted Data, and Sigma documents. Ex. 1 at 1–2.

This information adequately justifies the LSO's invocation of Guideline E. Under Guideline E, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. “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.

Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is the “[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities,” “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator [or] security official . . . involved in making a recommendation relevant to a national security eligibility determination. . . .” and “credible adverse information in several adjudicative issue areas that . . . 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 . . . .” Adjudicative Guidelines at ¶ 16(a), (b), and (c). Guideline E further provides that: “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 . . . [including] engaging in activities which, if known, could affect

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<sup>3</sup> The Individual's list of exhibits includes two other exhibits that would have been Exhibits C and D. However, they were never submitted.

the person's personal, professional, or community standing," may raise a security concern and be disqualifying. Adjudicative Guidelines at ¶ 16(e).

### **III. Regulatory Standards**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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 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 to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. Hearing Testimony**

The PSS testified at the hearing that he is a Senior Personnel Security Specialist who has worked with DOE for 22 years. Tr. at 17–18. The PSS described the process used to determine whether to recommend that an individual's security clearance should be removed. Tr. at 19–21. He testified that the concerns in this case are based on the information contained in Exhibit 4 and the QNSP. Tr. at 22–23. The PSS drafted the SSC. Tr. at 23. The PSS testified that dating back to before the Individual's XXXX trip, there have been "reporting obligations that required individuals to report sensitive -- contacts with individuals from sensitive countries." Tr. at 36–37. The PSS testified that the Individual was clearly required to report his "substantive professional business or personal contacts and relationships with sensitive country foreign nationals to the local, servicing CI office or CI representative." Tr. at 37. According to the PSS, "substantive relationship" is defined as a "relationship that is enduring and involves substantive sharing of personal information and/or the formation of emotional bonds." Tr. at 37. The PSS testified that the Individual's relationship with SCN-2 needed to be reported "due to the bonds of affection." Tr. at 38. He further testified that the Individual's answers to the February 19, 2015, QNSP should have disclosed his relationship with SCN-2. Tr. at 40-41. The PSS stated that the reason that the QNSP asks questions about foreign contacts is "to determine if there's any ties or influence that could cause a person to be exploited or open them to any kind of duress or manipulation, anything that can call into question their loyalty to the United States, which could raise a concern from a Personnel Security standpoint." Tr. at 42. The PSS testified that the Individual "refused to answer questions regarding a potential counterintelligence matter involving a coworker and that he refused

to provide the name of the coworker.” Tr. at 43. The PSS testified that DOE employees are expected to cooperate and to provide information when asked by OCI. Tr. at 43. The PSS testified that he, himself, is required to attend annual security briefings as a DOE Clearance holder. Tr. at 59. During those briefings he was informed about his reporting requirements and the dangers of contact with foreign nationals, especially when abroad. Tr. at 59–60. All cleared employees receive these annual briefings. Tr. at 60–61.

The Psychiatrist testified that, as a military psychiatrist, he has evaluated the mental health of hundreds of people to determine if they were fit to hold a security clearance, handle nuclear weapons, or to operate aircraft. Tr. at 67. He has testified in a “handful” of security clearance cases and many court proceedings. Tr. at 68–69. He conducted a clinical interview of the Individual. Tr. at 78. The Individual is an anxious man and the Psychiatrist found that the Individual meets the criteria for an “unspecified anxiety disorder.” Tr. at 79, 86. The Individual is also XXXXX XXXXX XXXXX. Tr. at 79. The Psychiatrist described the Individual as “extremely conscientious and compulsive about the details of things.” Tr. at 80. The Psychiatrist opined that Individual does not believe he did anything wrong and does not understand how his actions might be perceived by others. Tr. at 81–82. He arranged for the Individual to take the Millon Clinical Multiaxial Inventory (MCMI-IV). Tr. at 85. The MCMI-IV indicated that the Individual has generalized anxiety but not any evidence of a more serious psychological disorder. Tr. at 86. The Psychiatrist opined that the fact that XXXXX XXXXX XXXXX caused him to have difficulties during his interviews. Tr. at 89.

A friend and former colleague of the Individual testified on his behalf at the hearing. She testified that she worked closely with the Individual for over thirty years. Tr. at 124–25. She has remained friends with him after she retired. Tr. at 126. She has “complete trust in him.” Tr. at 126. She has never observed him failing to comply with security requirements. Tr. at 127. She thinks he is very honest and trustworthy. Tr. at 128. She has not worked with the Individual since 2010. Tr. at 131.

A second friend and former colleague of the Individual testified on his behalf at the hearing. He testified that he worked with the Individual since 2008 and had been working with him on a daily basis from 2014 until 2023. Tr. at 138–39. He testified that the Individual was “very conscientious of classification and the use of classified materials, you know, and the handling in general.” Tr. at 140–41. He believes the Individual is trustworthy. Tr. at 141. He recalled that it had sometimes been difficult to communicate with the Individual because XXXXX XXXXX XXXXX. Tr. at 142. The second friend remembers receiving training about the importance of reporting foreign contacts. Tr. at 144–45.

A third friend and colleague of the Individual testified on his behalf at the hearing. She worked with the Individual from 2007 to 2022 but does not see him often anymore. Tr. at 154–55. She testified that the Individual has always followed the security procedures. Tr. at 156. She believes him to be loyal to the United States. Tr. at 156. She has no concerns about his character. Tr. at 157.

The Individual’s former supervisor testified on his behalf at the hearing. He testified that he had supervised the Individual from 2008 to 2011. Tr. at 162. There was never an issue with the

Individual's handling of classified information. Tr. at 164. He believes the Individual to be trustworthy, honest, and reliable. Tr. at 164.

The Individual testified that he has held a security clearance since 1993. Tr. at 174. XXXXX XXXXX XXXXX. He XXXXX XXXXX XXXXX and began working for DOE [in the 1990s]. Tr. at 178–79. He was married [several decades ago]. Tr. at 181. The XXXX trip was the first time he had traveled internationally for work. Tr. at 183. The Individual testified that he received no training concerning reporting requirements before the XXXX trip. Tr. at 184. He also testified that he had not received any training on traveling abroad. Tr. at 185. The Individual subsequently testified that he had received security briefings before the XXXX trip. Tr. at 196–97. The Individual also testified about some of the security precautions he was instructed to take while in the SC. Tr. at 197.

The Individual admitted he met a woman in the SC. Tr. at 197. He testified that while he was in the SC, he decided to go to a bar in the hotel where [he] was staying. Tr. at 198. A hostess in the bar, SCN-2, initiated a conversation with him. Tr. at 198–99. The Individual testified that during this conversation, SCN-2 provided the Individual with her name and email address. Tr. at 199. The Individual claimed that this conversation was the only contact he had with SCN-2 while he was in the SC. Tr. at 199. The Individual testified that he had no reason to believe SCN-2 worked for the SC's government. Tr. at 199. About four to six months after the Individual returned from the SC, he initiated contact with SCN-2. Tr. at 204. At this time, the Individual was experiencing marital and family difficulties. Tr. at 204–05. He claimed that he initially sought friendship. Tr. at 205. Eventually he and SCN-2 began discussing whether they could be in a romantic relationship and whether she could move to the United States. Tr. at 206–07, 212. The Individual and SCN-2 even discussed the possibility of marriage. Tr. at 207. The Individual testified that their discussions occurred during a fifteen-to-eighteen-month period. Tr. at 207. The contacts occurred by telephone and email. Tr. at 208. The Individual claimed that the relationship ended in 2013, when the Individual and his wife reconciled, and SCN-2 indicated that she would not move to the United States. Tr. at 208–09. The Individual claimed he never shared any information about his work with SCN-2. Tr. at 209–10. The Individual testified that he tried, unsuccessfully, to find his emails to and from SCN-2. Tr. at 210–11. The Individual testified that he did not report his contacts with SCN-2 on his QNSP because he “wasn't that close to her physically” and did not “have continuous, like day-to-day interaction with her.” Tr. at 212. He further testified that he was not trying to be deceptive when he omitted his relationship with SCN-2 from the QNSP. Tr. at 213–14.

The Individual testified about the March 30, 2016, CI. When he was asked why he did not disclose his contacts with SCN-2 during this CI, he responded by stating “[b]ecause it was not a close, continuous contact.” Tr. at 221. He further claimed that he thought he only had to report contacts that were related to work. Tr. at 221. He claimed that he was not trying to withhold information or keep the investigators from knowing about his relationship with SCN-2. Tr. at 222. He initially testified that he telephoned the OCI the day after the March 30, 2016, CI to disclose his contact with SCN-1. Tr. at 222–23. The Individual subsequently testified that he could not recall whether he had disclosed his contacts with SCN-2 during the March 30, 2016, CI. Tr. at 225–26.

The Individual testified about the August 25, 2017, CI. The Individual claimed that the account of this meeting provided in Exhibit 4 was not accurate. Tr. at 229. The Individual indicated that

he had stated during the CI, that when he received his first cell phone, he had mistakenly taken it into the office outside of the vault, but then had realized his mistake and taken his phone to his car. Tr. at 230–31. He denied however that he had ever taken his phone into a vault. Tr. at 231. The Individual admitted he made a mistake by not reporting those instances where he brought the cell phone into the office. Tr. at 233. The Individual denied that he had admitted, during the August 25, 2017, CI, that he had repeatedly failed to follow transportation procedures for Secret Restricted Data, Secret Formerly Restricted Data, and Sigma documents. Tr. at 234, 269. He claimed that, during this CI, he had described the protocols for transporting those documents and indicated that he used the correct protocols. Tr. at 235–36. The Individual admitted he had disclosed his email contact with SCN-2 to DOE during the August 25, 2017, CI. Tr. at 239. The Individual could not recall whether this was the first time he had disclosed his contacts with SCN-2 to OCI. Tr. at 239.

The Individual testified about the June 29, 2022, CI. He testified that after being investigated by the FBI, he had a better understanding of what he needed to report. Tr. at 250. The Individual asserted that the account of the June 29, 2022, CI appearing in Exhibit 4 was inaccurate. Tr. at 250. The Individual admitted that he stated that the relationship with SCN-2 started in XXXX when he met her in a hotel bar while on official travel. Tr. at 251. The Individual testified that he would not describe his relationship with SCN-2 as “romantic” because “I just propose[d] we could become boyfriend/girlfriend.” Tr. at 251. The Individual claimed that his contacts with SCN-2 were limited to three emails, (an unspecified number of) phone calls, and one letter. Tr. at 252. The Individual noted that he had disclosed a lot of the information about his relationship with SCN-2 to the FBI investigator. Tr. at 254.

The Individual testified that he was a guest speaker at a class in the SC. Tr. at 202. A professor in the class indicated that he had a student who wanted to study in the United States and asked the Individual if he could send the Individual’s email to this student (SCN-1) so that the student could ask him questions about the United States. Tr. at 202-03. The Individual assented and arranged to provide his email address to SCN-1. Tr. at 202–03. SCN-1 emailed the Individual and informed the Individual he would be attending school in the United States. Tr. at 214–15. The Individual testified that he exchanged two or three emails with SCN-1. Tr. at 215. These contacts predated 2015. Tr. at 215. He was not close to SCN-1 and his contact was not continuous. Tr. at 215.

The Individual claimed that there was never a time that he was intentionally trying to be deceptive or misleading. Tr. at 260. He noted that he consented to several polygraphs. Tr. at 261. The Individual admitted that he refused to identify the name of a colleague that he had identified as being part of a counter-intelligence issue, and tried to justify his failure to cooperate with the OCI by claiming that the OCI was, or should have been, already aware of that person’s identity. Tr. at 262–66. The Individual testified that some of the issues that arose during the CIs and polygraphs occurred because he didn’t always understand the questions he was being asked. Tr. at 271-72.

## **V. Analysis**

The Individual exhibited poor judgment when he began corresponding with a national of a sensitive country whom he had met in the bar of a hotel where XXXXX XXXXX XXXXX. Given his training and occupation, he should have been keenly aware of the possibility that SCN-2 may have been working for or with the SC’s intelligence entity and the potential national security implications if that were true. If he was, in fact, aware of this possibility, then his actions would



have been of even greater concern. These concerns about the Individual's judgment are magnified by his romantic involvement with SCN-2. The Individual exhibited extremely poor judgment, unreliability, and a lack of trustworthiness by failing to timely report his contacts with SCN-2 to the OCI and by failing to disclose this relationship in his February 19, 2015, QNSP. Moreover, by conducting this relationship while he was married and by failing to disclose it to the OCI and LSO, he was also engaging in conduct that created a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity.

The behaviors discussed at length above also raise serious concerns about the Individual's ability and/or willingness to comply with rules and regulations. The Individual has failed to comply with reporting requirements, omitted information from a QNSP, repeatedly taken a cell phone into restricted areas, failed to cooperate with a counterintelligence investigation, and may have failed to abide by rules for the secure transportation of extremely sensitive documents.

The Individual's often contradictory and difficult to believe hearing testimony added to these concerns. For example, he testified that he did not report his contacts with SCN-2 on his QNSP because he "wasn't that close to her physically" and did not "have continuous, like day-to-day interaction with her." Tr. at 212. I found this explanation hard to believe, given that the Individual admits that he and SCN-2 had discussed the possibility of marriage. Another example of his poor credibility occurred when the Individual claimed that his and SCN-2's relationship was not romantic at one point during his testimony, after previously admitting that they had discussed marriage. Tr. at 251. The Individual further testified that he was not trying to be deceptive when he omitted his relationship with SCN-2 from the QNSP. Tr. at 213-14. Given the fact that he also repeatedly failed to report his relationship, he clearly was intentionally concealing the relationship. Accordingly, I find that this testimony to lack credibility.

The Individual does [not always communicate clearly]. However, the Individual has a Bachelor of Science degree in engineering from a well-regarded university. Tr. at 176-77, 183. He also attended [a prestigious college], where he received a Master of Science degree after graduating with honors. Tr. at 185-90. He attended this college after being nominated by [DOE] leadership. Tr. at 185-90. Moreover, he is a successful employee whose occupation requires both excellent written communication skills and the interpretation of rules and regulations. *See* Ex. A. These facts and the record convince me that the Individual is able to communicate effectively and that he is quite capable of understanding and interpreting DOE security's rules and regulations.

Of particular concern in the present case is the Individual's failure to cooperate in a counterintelligence investigation by refusing to provide the identity of a coworker who was potentially involved in a counterintelligence matter as well as other details concerning that matter. Guideline E specifically provides that a "refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination" "will normally result in an unfavorable national security eligibility determination [or] security clearance action . . . ." Adjudicative Guidelines at ¶ 15(b).

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline E. I find that none of these seven factors are sufficiently present to mitigate all of the

security concerns raised under Guideline E in the SSC. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if:

- (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 Individual did not correct his omission from the QNSP and his failures to report his relationship with SCN-2 until he was confronted during his polygraph examinations, his FBI interview, and his CIs. Moreover, I found the Individual's explanations for his omissions and failure to report his contacts and relationship with SCN-2 to be difficult to believe. Therefore, he has not shown that the mitigating factor set forth at ¶ 17(a) is present in the instant case. Adjudicative Guidelines at ¶ 17(a).

There is no indication that the Individual's omission from the QNSP, failure to report his contacts and relationship with SCN-2, and violations of security rules resulted from the advice of legal counsel or another professional who was responsible for advising the Individual about the security process. Accordingly, he has not shown that the mitigating factor set forth at ¶ 17(b) is present in the instant case. Adjudicative Guidelines at ¶ 17(b).

For the reasons discussed above, I cannot consider the Individual's QNSP omission, failure to report his contacts and relationship with SCN-2, failure to cooperate with a counterintelligence investigation, and violations of security rules to be minor or infrequent. Further, the Individual's QNSP omission, failure to report his contacts and relationship with SCN-2, and violations of security rules continued to occur over several years and his lack of candor at the hearing continues to cast doubt on the Individual's present good judgment, trustworthiness, and reliability. Therefore, he has not shown that the mitigating factor set forth at ¶ 17(c) is present in the instant case. Adjudicative Guidelines at ¶ 17(c).

There is no allegation that the Individual's QNSP omission, failure to report his contacts and relationship with SCN-2, failure to cooperate with a counterintelligence investigation, and violations of security rules been remedied by counseling or other steps taken to remedy the behavior. Therefore, mitigating factor (d) is not applicable. Adjudicative Guidelines at ¶ 17(d).

As discussed above, the Individual's behavior made him vulnerable to exploitation, manipulation, or duress. Now that this behavior has been revealed, it no longer makes him vulnerable to exploitation, manipulation, or duress. Therefore, mitigating factor (e) does apply to the security concern arising from the vulnerabilities to exploitation, manipulation, or duress created by the Individual's concealment of his relationship with SCN-2. Adjudicative Guidelines at ¶ 17(e). However, as discussed above, other concerns about the Individual's judgment, reliability, honesty, and trustworthiness remain unresolved.

The Individual presented no convincing evidence indicating that the information about his omission from the QNSP, failure to report his contacts and relationship with SCN-2, failure to cooperate with a counterintelligence investigation, and violations of security rules were unsubstantiated or unreliable, so mitigating factor (f) does not apply. Adjudicative Guidelines at ¶ 17(f).

As to mitigating factor (g), there has been no allegation that the Individual was associated with individuals who were involved in criminal activities, so the mitigating factor does not apply here. Adjudicative Guidelines at ¶ 17(g).

For these reasons, I conclude that the Individual has not resolved the Guideline E security concerns raised by his omission from the QNSP, failure to report his contacts with SCN-1, failure to report his contacts and relationship with SCN-2, failure to cooperate with a counterintelligence investigation, and violations of security rules.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not resolved the security concerns raised under Guideline E. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals