

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

In the Matter of: Personnel Security Hearing	)	
	)	
Filing Date: April 25, 2024	)	Case No.: PSH-24-0111
	)	
_____	)	

Issued: June 28, 2024

---

**Administrative Judge Decision**

---

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”<sup>1</sup> 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 that requires a security clearance. Derogatory information was discovered regarding the Individual’s personal conduct, financial choices, and criminal conduct. 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 testified on his own behalf. The LSO did not present any witnesses. *See* Transcript of Hearing, Case No. PSH-24-0111 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted three exhibits marked as Exhibits A through C.

**II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

---

<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.

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, F, and J 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.” 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 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 F states that failing to “live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.” *Id.* at ¶ 18. Conditions that could raise a security concern include:

- (a) Inability to satisfy debts;
- (b) Unwillingness to satisfy debts regardless of the ability to do so;
- (c) A history of not meeting financial obligations;
- (d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) Consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) Failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

- (g) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;
- (h) Borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) Concealing gambling losses, family conflict, or other problems caused by gambling.

*Id.* at ¶ 19.

Guideline J states that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and that, by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. *Id.* at ¶ 30. Conditions that could raise a security concern include:

- (a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) Evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;
- (c) Individual is currently on parole or probation;
- (d) Violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (e) Discharge or dismissal from the Armed Forces for reasons less than "Honorable."

*Id.* at ¶ 31.

The LSO alleges that the Individual:

- 1) Was arrested in December 2023 for Simple Assault following a domestic dispute and had two protective orders issued against him pursuant to the same incident (Guidelines E and J);
- 2) Failed to report the December 2023 arrest to his employer in a timely manner and later admitted that he failed to do so because he feared that details of a separate embezzlement incident would be disclosed (Guideline E);
- 3) Entered into an online romantic relationship with a person who claimed to be a famous actress (hereafter "the celebrity"), purchased gaming gift cards for her children totaling \$180, purchased a \$500 security card for her, and sent her \$3,207.88 for fees associated with a car he believed she had purchased for him (Guideline E);

- 4) Embezzled \$3887.88 from the bank account of a non-profit organization of which he was a board member (Guidelines E, F, and J); and
- 5) Admitted that he engaged in illegal activity because he was “not going to pass on [the] opportunity” to receive a new car (Guideline E).

Accordingly, the LSO’s security concerns under Guidelines E, F, and J are justified.

### **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 entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 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.* § 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**

In the evening of December 16, 2023, the Individual was arrested and charged with Simple Assault. Ex. 5 at 12. He was held in jail until the morning of December 18, 2023. Ex. 9 at 14. On December 18, 2023, a temporary protection order was issued against the Individual, prohibiting him from having contact with his wife and two adult sons. Ex. 10 at 4–5. That day, the Individual called a manager at his workplace outside his chain of command and left him a voicemail telling him about the arrest, but he did not report the arrest to his supervisor or the LSO and did not complete the required reporting forms. Ex. 9 at 2.

DOE learned of the arrest through a report generated automatically on December 18, 2023, from a personnel security continuous evaluation system, and on December 21, 2023, asked the

Individual to complete a Letter of Interrogatory (LOI). Ex. 9. In the December LOI, the Individual stated that the assault charge was the result of “an argument over money being spent and or stolen.” Ex. 9 at 1. The Individual was asked to complete a second LOI on January 4, 2024. Ex. 8. In the January 4 LOI, the Individual explained that he had been “cat fished” by a person claiming to be a celebrity. *Id.* at 1. The Individual said that the person who claimed to be the celebrity asked him to send her money and gift cards for a variety of reasons, including what the Individual believed to be “customs fees” for a car she said she would purchase for him in a foreign country. *Id.* The Individual obtained the funds for these expenditures by stealing \$3,887.88 from a non-profit organization (Non-Profit A) of which he was a board member. *Id.* As a result of this theft, he was removed from the board of Non-Profit A. *Id.* He also stated that he paid Non-Profit A back the money that he stole. *Id.* at 1–2. He did not inform DOE of the theft or cat fishing situation until he was asked about it in the second LOI. *Id.* at 1.

The Individual submitted two written character references from two friends who are familiar with his involvement in Non-Profit A. Ex. B; Ex. C. He also submitted a 2023 audit of Non-Profit A completed by an independent auditor. Ex. A. The audit explains that funds were misappropriated by a board member in 2023, but after the misappropriation was discovered, the funds were fully reimbursed to the organization. *Id.* at 12. In a final LOI that the Individual completed dated January 22, 2024, the Individual disclosed that he did not timely report his December arrest because he was afraid the details of his embezzlement from Non-Profit A would be disclosed to DOE. Ex. 6 at 2.

At the hearing, the Individual explained that he was able to access funds from Non-Profit A because he had a debit card for the organization as well as the ability to do electronic fund transfers. Tr. at 68–69. He stated that he “really didn’t think [taking the money from Non-Profit A] as a crime” because he was “always able to keep the [] organization’s money separate from [his] personal money” and he “automatically used [Non-Profit A’s] debit card for that purchase [the car fees].” *Id.* at 99–100.

The Individual testified that on December 15, 2023, he decided to admit to another member of Non-Profit A’s board, while she was visiting his home for board business and personal socializing, that he had taken money from the organization. *Id.* at 12. While he was telling this board member about this conduct, his wife returned home and also learned about the behavior. *Id.* at 12–13. He testified that his wife and the board member were upset by this news and he “had two women in [his] face shouting.” *Id.* The Individual decided that it would be best if he left the house, but the raised voices had attracted his sons from their rooms and a physical confrontation occurred. *Id.* at 22–23. This physical confrontation included a “pushing fight” between the Individual and one of his sons. *Id.* at 23–24. His family and the board member did not want the Individual to leave the house, and, at some point, the Individual pushed one of his sons off balance, causing the son to get a small injury. *Id.* at 24–25. The Individual’s sons restrained him on the floor in the home, but eventually let him leave when he asked. *Id.* at 25. The Individual stated that the physical confrontation occurred because “[his family] would not let [him] leave [his] house.” *Id.* at 39. He returned to his home later that evening knowing that the police were there. *Id.* at 26. Then the Individual was arrested and taken to jail. *Id.* at 38. Protective orders were issued prohibiting the Individual from contacting his sons, his wife, and the board member who was involved in the confrontation. *Id.* at 27.

On December 21, 2024, the Individual received a message on his work email account from a person with the LSO asking him to fill out paperwork about his arrest. Ex. 9 at 16–17. The Individual testified that he did not know who the person from the LSO was and that until he spoke with a person whom he trusts and works in security at his work site, he was not sure if he was actually supposed to fill out the paperwork. *Id.* at 46. The Individual stated that he was “questioning” the email because that is what he had been taught in trainings. *Id.* He later agreed that he had recently completed training and was aware that he was obligated to report his arrest as a clearance holder. *Id.* at 59.

The Individual testified that the protective orders that prohibited him from contacting his sons were modified in January 2024, allowing the Individual to communicate with his sons as long as they reached out first. *Id.* at 27. He also stated that he had asked both of his sons to write a character reference letter for him, but neither of them did so. *Id.* at 88.

The Individual explained that he had been undergoing “social therapy” with a therapist to work on “communication.” *Id.* at 53. He also stated that he pled guilty to the assault charge, but the charge was dismissed after he took an anger management course and paid the relevant fines and fees. *Id.* at 89–90. The Individual repeatedly stated that he could not explain why he would send money to a stranger from the internet but was wary of answering questions from the LSO as he was unsure if it originated from a legitimate source. *Id.* at 48–49. When asked if he still believed he had been talking to the celebrity, he responded that he did not know who he had been talking to. *Id.* at 113. The Individual stated that he believed at the time that he was speaking with the celebrity because:

She said that she – she – she said that she was at a point in her life where she needed somebody, but she couldn’t find somebody that – that – where she was. Meaning that in California. She couldn’t find somebody that – that she wanted to be with. But her meme, you know, her little picture up in the corner, you know, was a picture of her. So, I mean, I guess, you know, anybody could pull picture up off the Internet, and put it up there, you know, but it wasn’t a reason – I mean, the way she talked and how she talked and everything didn’t lead me to believe that it wasn’t her.

*Id.* at 102–03. The Individual also testified that he did not know how he had gotten into this situation, meaning the celebrity relationship, embezzlement, and eventual arrest and protective orders. *Id.* at 121. When asked why he did not contact DOE regarding the situation before being confronted about it, he responded, “because I was on vacation.”<sup>2</sup> *Id.* at 122.

## 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

---

<sup>2</sup> The Individual referred to paid time off as “vacation” but did not travel during that time.

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.

#### **A. Guideline E**

Conditions that could mitigate a Guideline E security concern 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.



DOE requires that clearance holders report arrests and criminal charges to the appropriate security office “immediately, but in no event later than three (3) working days after the occurrence.” DOE Order 472.2A, Personnel Security, Attachment 5. The Individual contacted a person he trusted at his workplace who was not his supervisor the first business day after his arrest, but failed to contact his supervisor or fill out the required documentation until he was contacted about it by the LSO four business days after his arrest. As such, I cannot find that the Individual undertook a good faith effort to correct the omission. He also concealed information about the money that he took from Non-Profit A from DOE until he was asked about the incident in his second LOI. As such, mitigating factor (a) does not apply here.

The Individual did not allege that he was advised by legal counsel or that another person with professional advising responsibilities contributed to his failure to disclose relevant information. As such, mitigating factor (b) does not apply here.

Given the multiple Guideline E concerns outlined in the SSC and that all of the behavior occurred within the last year and involves violence and a serious breach fiduciary trust, I cannot say that the offenses were minor or so much time has passed. I find the Individual’s lack of insight and his unwillingness to take responsibility for his role in the conflict that occurred in December 2023 concerning. Furthermore, I am troubled by his lack of insight into how he became a victim of an online impersonation scam. As such, I cannot say that these events happened under unique circumstances, and mitigating factor (c) does not apply.

Mitigating factors (d) and (e) do not apply because the Individual has not alleged that he obtained counseling or took other steps to alleviate the behavior or eliminate his vulnerability to exploitation, manipulation, or duress. The therapy he has attended addresses communication skills, which are not relevant to the LSO’s concerns about the Individual’s violent behavior, theft, and attempt to hide some of his actions from DOE.

There is no allegation that the information that the LSO relied upon was unsubstantiated or from a source of questionable reliability, so mitigating factor (f) is not applicable. The LSO has not alleged that the Individual was associated with persons involved in criminal activities, and thus, mitigating factor (g) does not apply here.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline E concerns.

## **B. Guideline F**

Conditions that could mitigate a Guideline F security concern include:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The conditions that resulted in the financial problem were largely beyond the person’s control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending

practices, or identity theft), and the individual acted responsibly under the circumstances;

- (c) The individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and
- (g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

As explained above, the Individual's embezzlement was recent and continues to cast doubt on the Individual's reliability, trustworthiness, and good judgment due to his inability to recognize how he came to be involved in an online scam that led to the misappropriation of funds. He breached his fiduciary duty to Non-Profit A, which casts doubt on his ability and willingness to uphold his fiduciary relationship with the government. Mitigating factor (a) does not apply.

There is no allegation that the financial problem was beyond the Individual's control, and, therefore, mitigating factor (b) is not applicable. The Individual has not alleged that he received financial counseling, so mitigating factor (c) does not apply. Mitigating factor (d) does not apply because the concern here is not that the Individual has debts, but that he committed a financial breach of trust and used illegal financial practices. The LSO has not alleged that the Individual has a past due debt, so mitigating factor (e) does not apply. There is no affluence at issue here, so mitigating factor (f) is not relevant. There is no indication that the Individual has had any issues with his taxes, so mitigating factor (g) does not apply here.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline F concerns.

### **C. Guideline J**

Conditions that could mitigate a Guideline J security concern include:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

The Individual's Simple Assault charge and embezzlement are relatively recent and, while the circumstances were certainly not common, his lack of insight into how the situation happened indicates that the behavior could occur again. The Individual cannot explain his willingness to steal money for a stranger, which casts significant doubt on his judgment and trustworthiness. Accordingly, mitigating factor (a) does not apply.

There is no indication that the Individual was coerced into taking the money from Non-Profit A or being involved in the altercation with his children. Therefore, mitigating factor (b) does not apply here. There is no allegation that the Individual did not commit the offenses, and, as such, mitigating factor (c) does not apply here.

While the Individual did repay the money that he took from Non-Profit A, take anger management classes, and pay the required court costs, there is no evidence of rehabilitation from his choice to embezzle. Furthermore, the Individual's wife and children still have active protective orders against him. Mitigating factor (d) is not applicable.

Accordingly, I find that the Individual has not mitigated the Guideline J concerns.

## **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 Guidelines E, F, and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those 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