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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	September 5, 2024	)	Case No.: PSH-24-0187
		)	
		)	

Issued: January 10, 2025

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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**

The Individual is a Federal employee who was responsible for oversight over certain functions at a DOE-Owned Contractor-Operated facility (the Site).<sup>2</sup> On May 19, 2023, an investigator (CI) hired by the DOE contractor operating the Site (the Contractor) issued a report (the CR) of the results of an impartial fact-finding investigation the CI had conducted of a complaint made by a Contractor employee, Mr. A, about an alleged incident involving the Individual.<sup>3</sup> Exhibit (Ex.) 13A at 1. The CR stated the following findings: (1) “[s]everal people corroborated that [the

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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.

<sup>2</sup> The present decision discusses allegations and statements provided by current and former employees of the DOE Contractor who operated the Site on behalf of the DOE. I have identified each of these employees by assigning them a letter. Each of these employees worked in a division at the Site that was headed by Mr. B, who in turn reported to Ms. D. The Individual was a DOE Employee responsible for overseeing this division.

<sup>3</sup> Mr. A alleged the Individual had used “vulgar, offensive, and threatening language” during a December 12, 2022, meeting. Ex. 13A at 2. After interviewing Mr. A, the CI amended the scope of her investigation to include allegations that the Individual: (1) used vulgar and offensive language; (2) abused “his position as a Federal employee to form relationships with [contractor] employees that he used to advance his own agenda rather than, as he stated, to help those employees;” and (3) had an inappropriate sexual relationship with a [contractor] employee. Ex. 13A at 2.

Individual] regularly and consistently uses vulgarity in the workplace;” (2) two women reported that the Individual attempted to tell them what sexual harassment looks like and demonstrated examples; (3) “[s]everal people provided examples where [the Individual] talks about and demeans people behind their backs;” and (4) allegations the Individual had a sexual or romantic relationship were corroborated. Ex. 13A at 21–22.

On June 10, 2024, the local security office (LSO) received an information report (IR) indicating that the Individual was under a formal administrative investigation by the DOE’s Office of Human Capital’s (HC) Office of Policy, Labor and Employee Relations (OPLER), Administrative Investigations Division (AID), due to allegations of inappropriate sexual conduct and sexual harassment.<sup>4</sup> Ex. 12 at 1.

On July 18, 2024, after a Notification Letter was issued to the Individual advising him that DOE possessed derogatory information creating substantial doubt regarding his eligibility to hold a security clearance along with a summary of security concerns (SSC) enumerating the specific concerns, OPLER’s AID issued a Final Report of Investigation (FR) concerning the Individual.<sup>5</sup> Ex. 13 at 1.

The FR found that the Individual “abused his authority as a [F]ederal employee while mentoring and overseeing contract employees”; sexually harassed contract employees; engaged in behaviors, sexual remarks, and innuendos that violated DOE policy “for unprofessional and offensive conduct that can reasonably be considered to adversely affect the work environment”; and “created a hostile work environment.” Ex. 13 at 5–6. To this end, the FR concludes:

[The Individual] admitted during his interview to demonstrating sexual harassment on two female employees [of the Contractor], [Ms. D] and [Ms. E], by physically touching and rubbing the women on their hands and arms. [The Individual] also admitted to having a consensual sexual relationship with [Ms. F], a former contract employee over whom he had direct oversight. Emails recovered during the investigation corroborated [the Individual’s] testimony. [The Individual] displays

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<sup>4</sup> The IR reported a series of allegations concerning the Individual’s conduct, specifically:

- (1) He engaged in a sexual relationship with a Contractor employee who he oversaw as part of his responsibilities as a DOE employee. Exhibit Ex. 12 at 1.
- (2) He “made inappropriate sexual comments to other female contract employees he oversees as part of his duties.” Ex. 12 at 1.
- (3) He made inappropriate, obscene and disrespectful gestures and comments to a Contractor employee. Ex. 12 at 2.
- (4) He directed profanity at Contractor employees and engaged in intimidating behavior towards them, including threatening to take administrative actions against them. Ex. 12 at 2.
- (5) A manager of the Contractor reported experiencing “an inappropriate sexual encounter” with the Individual and expressed concerns about the safety of other women employees. Ex. 12 at 2.

<sup>5</sup> The LSO issued an updated SSC to reflect the issuance of the Final Report.

a predatory pattern of behavior with female employees. [The Individual] approached the three (3) female employees in the Division and offered to “help” the contract women to obtain federal employment and [resolve] workplace issues and concerns with [their supervisor, Mr. B]. [The Individual] would then use the meetings with the women to isolate the women, making inappropriate gestures such as demonstrating sexual harassment, rubbing their arms, and making comments about the women’s bodies.

Ex. 13 at 6. The FR further states:

[The Individual] denies all claims made by [a Contractor employee, Mr. H] alleging [the Individual] behaved in a vulgar, unprofessional manner when he visited [Mr. H] in his office. [Mr. H] alleged [the Individual] made a vulgar statement, then bent over in front of his desk and spread his butt cheeks. There were no witnesses to this incident. However, [Mr. H] was determined to be more credible in his witness testimony than [the Individual] given the pattern of misconduct displayed by [the Individual] that was substantiated.

Ex. 13 at 5. Finally, the FR concludes: “[The Individual] engaged in conduct unbecoming a government employee through inappropriate interactions and statements made to several [Contractor] employees. [The Individual] physically touched and sexually harassed female employees making them feel uncomfortable, resulting in [Ms. E] transferring to a different department and [Ms. F] left the organization entirely.” Ex. 13 at 6.

#### **a. Present Administrative Review Proceeding**

After receiving the IR, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it received derogatory information creating substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. *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), I took testimony from the Individual and his former supervisor. The DOE Counsel submitted fourteen exhibits, marked as Exhibits 1 through 14. The Individual submitted eight exhibits, marked as Exhibits A through H.

Exhibit A is a copy of the power of attorney signed by the Individual authorizing his counsel to represent him in the present proceeding.

Exhibit B is a copy of the Individual’s “Certificate of Release or Discharge from Active Duty.”

Exhibit C consists of a set of NCO Evaluation Reports concerning the Individual.

Exhibit D is a copy of a Recommendation for Reward concerning the Individual and certificates, dated December 2, 2007, and June 20, 2013, indicating that the Individual had twice been granted the Bronze Star Medal for his “Exceptionally Meritorious” service in the United States Army. Ex.

D at 4–5. The exhibit also includes a copy of a certificate, dated May 16, 2011, granting the Individual the Meritorious Service Medal. Ex. D at 10. Exhibit D also includes a copy of a training certificate for a Sexual Harassment/Assault Response and Prevention course. Ex. D at 15.

Exhibit E is a copy of an EEO Counselor's Report, dated July 2, 2024, concerning an EEO complaint filed by the Individual in which he claimed to have been the subject of reprisal by the Contractor, which he claimed was motivated by his reporting of sexual harassment. Ex. E at 2. One of the witnesses interviewed by the EEO Counselor was Ms. E. Ex. E at 3. Concerning this interview, the EEO Counselor stated:

[Ms. E,] contractor employee, stated, . . . that she provided a statement recanting her initial statement to the person investigating the allegations of harassment regarding the [Contractor] employees. She stated she was coerced into making the statement by [Mr. B, her Division Manager] and was afraid of losing her job if she hadn't made the initial statements. Witness did not provide a written statement.

Ex. E at 3.

Exhibit F is a copy of an EEO Formal Complaint Supplemental Sheet Part 3: Event Information dated July 22, 2024, and authored by the Individual who stated in pertinent part:

My leadership told me I was under investigation last year and to have minimal contact with the [DOE Site] because they had written allegations against me. I was removed from my position as the . . . Employee Concerns Manager (ECP), and my duties were given to [another employee].

I was never told what the allegations were. I have never been disciplined or written up in my four-year . . . DOE career . . .

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Before my event, I got [Mr. B] charged with the exact alleged charges against me . . .

The new allegations against me are all from [Mr. B's] employees, and he is the only person in the [DOE Site] aware of the complaints. [Mr. B] had a sensing [sic] session a few years ago with all the female personnel . . . and they had various complaints against [Mr. B] that ranged from sexual harassment, bullying, creating a hostile work environment, intimidation, and disturbing work promotions, pay, and advancement.

The sensing session happened because I went to the . . . Diversity Manager and told him there were serious issues with all the female . . . employees, as four of them had come to me for courses of action within the [Contractor's] EEO system. At the time, the employees directly related were [Ms. G] and [Ms. E]. [Mr. B] is their overall Supervisor.

[Ms. E] advised me that her boss, [Mr. B], coerced and manipulated her to make false complaints against me with the help of [Mr. A]. [Ms. E] stated that she felt she had to do it because she had gotten a new position and had a salary change. Oddly enough, [Ms. E] charged her boss with sexual harassment when he got in trouble. I advised my boss, . . . of the information I was given, and he stated, “We are not touching this.” We were told not to get involved in this scenario . . . .

Ex. F at 1–2.

Exhibit G consists of two written declarations by individuals who attest to the Individual’s good character.

Exhibit H is a sixteen-page prehearing brief submitted by the Individual’s counsel on the morning of the hearing. In essence, the brief contends that the allegations set forth in the SSC are without merit and that the Individual has been targeted by Mr. B, alleging that Mr. B supervised each of the employees who made allegations against the Individual. Ex. H at 13. To this end, the brief notes that one of his accusers, Ms. E, recanted her statement against the Individual and claimed that the only reason she made that statement was because she had been coerced into doing so by Mr. B. Ex. H at 11. The brief further cites the Individual’s decorated military service as evidence of his good judgment, reliability, and trustworthiness. Ex. H at 2–3. The brief also contends that “the allegations against [the Individual] occurred under unusual circumstances and there is no evidence to suggest that his alleged behavior would recur.” Ex. H at 11.

On November 18, 2024, after the hearing concluded, the LSO submitted a response to Exhibit H, which appears in the record as Exhibit 14.

## **II. The Notification Letter and the Associated Security Concerns**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cites Adjudicative Guidelines D and E.

Under Adjudicative Guideline D (Sexual Behavior), the LSO cites the IR and FR’s allegations that the Individual: (1) engaged in a sexual relationship with a Contractor employee who he oversaw; (2) sexually harassed two female Contractor employees by inappropriately touching them; and (3) made demeaning comments and sexual gestures in the presence of a Contractor employee.<sup>6</sup> These allegations adequately justify the LSO’s invocation of Guideline D. The Adjudicative Guidelines state: “Sexual behavior that . . . reflects a lack of judgment or discretion . . . may raise questions about an individual’s judgment, reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 12. Among those conditions set forth in Guideline D that could raise a disqualifying security concern is “sexual behavior . . . that reflects a lack of discretion or judgment.” Adjudicative Guidelines at ¶ 13(d).

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<sup>6</sup> The SSC also contains a series of allegations that I find do not raise security concerns under Guideline D. Specifically, the SCC alleges that the Individual: (1) used profanity in the presence of Contractor employees; (2) engaged in unprofessional and offensive conduct; and (3) made people feel uncomfortable.

Under Guideline E, the LSO cites the IR and FR's allegations that the Individual: (1) engaged in a sexual relationship with a Contractor employee who he oversaw; (2) sexually harassed two female Contractor employees by inappropriately touching them; (3) used sexual gestures in the presence of a Contractor employee; (4) used profane language in the workplace; (5) spoke "poorly" to employees; (6) "used intimidation as a control tactic"; (7) failed to modulate his temper; (8) was responsible for an environment of "fear and anxiety" in the workplace; and (9) abused his authority as a federal employee by encouraging contractor employees to "gather[] information about other contractor employees to report to EEO," "openly critici[zing] employees' performance," engaging in harassing conduct, and providing inconsistent responses in an interview with the CI. 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. Conditions set forth in the Adjudicative Guidelines that could raise a disqualifying concern include

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; [and]

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 . . . (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.

Adjudicative Guidelines at ¶ 16(c)–(d) (emphasis added). I find that the LSO is precluded from raising the Individual's alleged sexual misconduct in the workplace under Guideline E because the LSO raised the same allegations under Guideline D. With respect to the other allegations raised by the LSO under Guideline E, I find that they are insufficiently specific, severe, or substantiated to present security concerns under Guideline E.<sup>7</sup> Accordingly, I will not consider the LSO's allegations under Guideline E herein.

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<sup>7</sup> For example, the LSO's allegations that the Individual caused employees to feel discomfort or was unduly critical of employees are too vague to present security concerns. Furthermore, the Individual's alleged cursing in the workplace, while unbecoming of a Federal employee, is not conduct of a nature that would present security concerns even if substantiated. Additionally, the LSO's allegations that the Individual abused his authority by encouraging employees to gather information to support EEO complaints, despite his being the Site's EEO Officer, is insufficiently substantiated and of dubious relevance to the security concerns set forth under Guideline 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

At the hearing, the Individual testified that he is a Federal employee who is "responsible for federal oversight of all programs, policies, procedures, infrastructure, [at the Site]." Tr. at 27. He testified that he was hired to address the poor performance of the Contractor. Tr. at 32–33. The Individual testified that his job is to oversee Mr. B. Tr. at 108. The Individual testified that all the Division's employees except Ms. D and the Division Director report to Mr. B. Tr. at 39. Mr. B reports to Ms. D. Tr. at 39.

The Individual also testified that he was the Site EEO Officer. Tr. at 128. In that capacity he informed the contractor's diversity office of concerns raised by some of the contractor's female employees about Mr. B. Tr. at 128–129. The Individual claimed that a contractor employee, Ms. G, had raised concerns to him about being bullied and harassed and that he had encouraged her to take her concerns to the contractor's EEO Office. Tr. at 33–34, 95. As a result of her complaint, he testified "they had a sensing session for over 30 females in the . . . Division against [Mr. B] for bullying, sexual harassment, unhostile – hostile work environment, and affecting their promotions and transfers and pay raises." Tr. at 34. The session was moderated by Mr. B's supervisor, Ms. D, who, the Individual accused, was having a sexual relationship with Mr. B. Tr. at 34. He claimed that the charges against Mr. B were substantiated. Tr. at 34. The Individual further testified:

. . . I am the one who reported to the [Site] that there was a problem after the third female in his office came and spoke to me about there being bullying, harassed, sexually harassed in the workplace. I went to the [DOE Site] EEO to tell them they have an issue inside their . . . Division, and that's when they had the female-only

sensing session with 30 female employees who all stated the same things, sexual harassment, hostile work environment, a bully as a leadership style, and that's why [Mr. B] was put on the trainer – trainer program he is now instead of being fired.

Tr. at 55. The Individual claimed that the allegations cited in the SSC were a “retaliation and witch hunt” against him orchestrated by Mr. B in retaliation for his efforts to address Mr. B's wrongdoing. Tr. at 61–62, 102–105. The Individual claimed that his relationship with the Division's employees was challenging because Mr. B had created a hostile work environment which has forced the Individual to be “very confrontational with his employees.” Tr. at 40.

The Individual further claimed that Ms. E had asked him to meet with her in her vehicle. Tr. at 36. He further testified that:

Inside the vehicle she stated that she was sexually harassed or sexually assaulted, very uncomfortable, didn't want to speak, and I – as it was stated, I'm a sexual assault investigator, trained, so therefore in order to direct her properly to where she needed to go, because sexual harassment is an administrative action and sexual assault is a crime, so in order to find out what took place, I asked her to – I didn't touch her. I asked her to touch me so that I could understand what happened, because there's a difference between rubbing, caressing, groping, being touched, grabbed, choked, or anything like that when it comes to an assault, and there's other elements as well. Were you bumped? Were you – were you rubbed against? What was the body language of the individual? So in order for me to direct her to which was she needed to take the path, [sic] I needed to identify what happened, and that's what I did. And I had her demonstrate on me, on my arm, to show me what she experienced. And she did, and those sexual harassment charges were substantiated against her boss, [Mr. B], which she got a new position and pay raises after that was done, and which I'm currently under the same allegations and charges after two and a half years.

Tr. at 36.

When the Individual was asked if he had had a personal relationship with Ms. F, the Individual repeatedly testified that his relationship with her was not intimate, but rather was platonic. Tr. at 40–41, 74, 78–80, 82. The Individual denied that he had ever tried to initiate a relationship with Ms. F. Tr. at 78. He testified that he was never Ms. F's supervisor and that he was unaware of any rule which would have prevented him from having a personal relationship with Ms. F. Tr. at 42–43. The Individual testified that that one of the investigators asked him if he had a relationship with Ms. F. Tr. at 125–26. He testified that he told her he did not. Tr. at 126.

The Individual's Counsel asked him: “. . . did you ever demonstrate what sexual harassment/assault was on a female contractor/employee of the DOE?” Tr. at 55. The Individual responded by stating: “No. I had them put – do it on me.” Tr. at 55. The Individual testified that he was trained to do so as a sexual assault response coordinator in the military. Tr. at 56–58. The Individual testified: “I'm not demonstrating. I'm asking them what happened to them, and I'm asking them



to show me.” Tr. at 58. The Individual subsequently testified that he did not demonstrate sexual harassment on the women, but rather he demonstrated on himself. Tr. at 118.

The Individual testified that while he and Ms. D were in her office they discussed “touchy-feely bosses and what they do.” Tr. at 53. The Individual further stated:

She gave me an example of what one of her bosses does. I stood up to show her what my boss used to do, one of my female bosses used to do. Used to be a touch the shoulder person. So I said, “Hey, the lady used to walk up behind me,” and I put my hand on my shoulder, “and she used to talk to me and have my shoulder like that,” I – and that’s what I did. [Ms. D] did not say she was offended. Ms. [D] did not say she felt intimidated. Ms. [D] did not say she felt I was in her personal space. She laughed. She continued to laugh. I went back behind her desk. I sat back in front of her. We talked for about another half an hour, and upon the meeting being over she told me, “. . . please come back and see me . . .”

Tr. at 53. The Individual subsequently admitted that he told an investigator that he had demonstrated sexual harassment to Ms. D. Tr. at 90. He further testified that he had not sought consent, and that Ms. D had not objected. Tr. at 90. He denied having any sexual intent towards Ms. D. Tr. at 118.

The Individual claimed he had a good relationship with Mr. H and that he “joked with [Mr. H] every day.” Tr. at 58–59. He denied ever asking Mr. H: “When is your old ass going to retire?” Tr. at 59–60.

The Individual’s former supervisor testified on his behalf at the hearing. Tr. at 137. She supervised the Individual from October 2023 to February 2024. Tr. at 137. She testified the Individual did not exhibit any concerning behaviors in the workplace when he worked for her. Tr. at 140. She testified that the Individual used profanity on occasion. Tr. at 140.

#### **IV. Analysis**

The Individual contends that the allegations set forth in the SSC are false and motivated by an intent to retaliate against him. The motivation for making an allegation is irrelevant, if it is accurate and raises security concerns about the Individual. I note that the allegations adopted in the FR are the conclusions of an official DOE report. However, the FR is often written in an ambiguous manner that sometimes makes it difficult to interpret, contains factual and grammatical errors, and contains sentence fragments. Moreover, as discussed below, the FR relies on evidence that does not appear in its exhibits (at least not in the copy of the FR entered into the record by the LSO). However, as discussed below, the FR includes numerous sworn statements of individuals attesting to the Individual’s inappropriate behavior. These statements raise serious security concerns about the Individual which he has not shown to be unsubstantiated.

### **a. Alleged Sexual Relationship with a Contractor Employee**

The FR concluded that the Individual had a sexual relationship with Ms. F, a contractor employee who worked in the Division which the Individual oversaw. While the Individual testified at the hearing that his relationship with Ms. F was platonic, the FR states that the Individual “. . . admitted to having a consensual sexual relationship with [Ms. F] a former contract employee over whom he had direct oversight,” and that “[e]mails recovered during the investigation corroborated [the Individual’s alleged admissions].”<sup>8</sup> Ex. 13 at 6. In support of this conclusion the FR states:

[The Individual] also admitted . . . he and [Ms. F], a former contract employee, were in an intimate sexual relationship outside of work. [The Individual] stated he knew her child, parents, mutual friends, etc. [The Individual] was asked if [Ms. F] left the job because their relationship ended. stated, [sic] “*No, [Ms. F] was moving to . . . anyway. [Ms. F]’s daughter lives in . . . with [Ms. F]’s parents. [Ms. F] always planned to move there. [Ms. F] was leaving the [DOE Site] to start her own business because of limited opportunities for professional development and growth in her position at the [DOE site] as it pertained to her male counterparts*”. (Exhibit 10)

Ex. 12 at 26–27. (emphasis in the original). The FR cites FR Exhibit 10 for this statement. However, FR Exhibit 10 is a signed statement by Ms. G, and does not discuss the Individual’s relationship with Ms. F.<sup>9</sup> Ex. 13J. Since FR Exhibit 11 is the signed statement of the Individual, which includes the quote that appears above in italics, it appears that the investigator intended to cite FR Exhibit 11 rather than FR Exhibit 10.<sup>10</sup> FR Exhibit 11 included the Individual’s response to the question: “Did you and [Ms. F] have a personal relationship? If so, for how long?” Ex. 13K at 4. The Individual responded by stating: “Yes, I knew her personally, outside of work. We had mutual friends, I met her parents, and her daughter. This has been since I arrived and introduced myself in the department.” Ex. 13K at 4. It is not clear whether the FR Investigator interpreted the term “personal relationship” as synonymous with “intimate sexual relationship” or whether the Individual admitted having an intimate sexual relationship with Ms. F to the FR Investigator without including that admission in his signed and sworn statement.

The FR further claims that the FR Investigator had reviewed emails indicating that the Individual and Ms. F had an intimate sexual relationship. The FR does not specifically cite any emails and they do not appear as exhibits in the copy of the FR submitted by the LSO. However, the CR discusses an email exchange between the Individual and Ms. F. To this end, the CR states in pertinent part:

On June 17, 2022, [the Individual] sent an email to [Ms. F], “Good convo the last few days, I hope you got some insight from a man’s perspective. I have been single

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<sup>8</sup> In addition, two of the Contractor employees, Mr. A and Ms. E, who were interviewed during the investigations reported that Ms. F had informed them she and the Individual were having a sexual relationship. Ex. 13A at 5–16.

<sup>9</sup> FR Exhibit 10 appears in the record as Exhibit 13J.

<sup>10</sup> FR Exhibit 11 appears in the record as Exhibit 13K.

and on these streets since 1997...You are too sexy and smart to let any man make you feel anything less than what you are and can be and certainly not be disrespected in any way. As I listen you don't date men from work, but if you ever want to have more convo other than work I will leave that option open for you, if not all good, it will just be work sessions, I'm good with that, My work cell is below, you can call or text anytime. I will give you my personal cell just in case . . . . Just know with your new transformation, those past dudes are hurting knowing they let you slip away, your only going to be like wine, finer and smarter with time, your past makes you who you are, bad choices and mistakes, learn and let them go, the things you did well continue to develop those traits."

Ex. 13A at 21. The CR indicates that Ms. F responded by stating:

Its nice to hear a man's perspective because as you said, men don't share those things, I appreciate you doing so and more so trying to make sure I see myself in a different light, it's actually refreshing (you know what your doing, lol) I don't date men from work as you know it can get messy and I've had enough messiness, it's time for drama free adult relationships, friendships, whatever!

Ex. 13A at 21. While the email exchange described in the CR does not establish that the Individual and Ms. F had an intimate sexual relationship, it does show that the Individual had expressed an interest to Ms. F in having a non-platonic relationship with her. Given, the unequal power dynamic that existed between him and Ms. F and the potential for such a relationship to affect his impartiality (or to affect the perception of his impartiality) when overseeing Ms. F and her employer, a non-platonic relationship with Ms. F would have been inappropriate and perhaps illegal. Accordingly, the Individual exhibited impaired judgment by pursuing a relationship with Ms. F.

## **b. Alleged Sexual Harassment**

Ms. D's written statement to the FR investigator states in pertinent part:

In the summer of 2022 [the Individual] requested a meeting with me. . . . He came to my office. He made me uncomfortable with the conversation, showing me what a "bad boss" does. To show me what "bad bosses" would do he physically showed me by touching my hand and coming up behind me very closely and hovering over my shoulder, for example. I have been in a predominantly male environment for my career of over 25 years, and have experienced a number of uncomfortable situations, however I wasn't concerned for myself, but rather for the female employees who worked closer with him . . . and may not be comfortable standing up for themselves if found in a similar situation.

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As I mentored [Ms. E] she shared some concerns about being promoted to a new job that would put her physically in a space where [the Individual] would be able

to access her alone. When I pressed her on her concerns she indicated that he acted inappropriately with her (e.g., texting her in the evening, saying or doing unprofessional things).

Ex. 13H at 1–2.

The FR Investigator asked the Individual: **“Did you demonstrate sexual harassment to [Ms. D] in her office when you asked her to meet? If so, how did you demonstrate?”** Ex. 13K at 3 (emphasis in the original). The Individual responded by stating: “Yes, we ([Ms. D] and I) were having a conversation about something a prior female boss had done to me. I demonstrated on [Ms. D] by placing my hand on her shoulder and hand and hovering over her while she sat at her desk.” Ex. 13K at 3. On April 22, 2024, the Individual signed this statement affirming that this statement was his, and true and accurate to the best of his ability. Ex. 13K at 5.

The CR states:

In about October/November 2020, [Ms. E] states that [the Individual] “tried to get friendly” with her and hit on her . . . .

According to [Ms. E], she blocked [the Individual’s] cell phone number from her phone because he texted her at inappropriate times, after work hours. In one of those texts he said something like “yo hit me up if you can,” which she interpreted to mean to call him. . . . She states that she has a work extension and a work email so she did not understand why he did not use them. [] [S]he now feels that she “welcomed it” because she did not shut him down. She should have told him that this was none of his business, but she didn’t say anything.

Ex. 13A at 12–13.

The CR further reports that:

[Ms. E] said that during a “meeting” with [the Individual] in her truck, [the Individual] tried to advise her about what a boss can do to be inappropriate, and in so doing, [the Individual] himself acted inappropriately. He had asked to talk in her truck rather than in his office so people would not see them. [Ms. E] said that he leaned over the center console to the driver’s seat she was sitting in and asked, “What is [Mr. B] doing? Is he sexually harassing you?” At that point, according to [Ms. E], [the Individual] “got in [her] face” and said “[Ms. E’s first name], if I tell you your lips look so soft and I really like them, you know that’s sexual harassment, right?”

Ex. 13A at 21–22.

However, Ms. E later provided a signed statement to the investigator in which she recanted her statements to the CI, stating: “Last interview . . . I felt pressured by my peers to go with the majority and say [the Individual] was inappropriate. Since transferring from the area, I see things clearly.”

Ex. 13I at 2. Ms. E then stated that “my friends [Mr. A] and [Ms. F] was telling me things about [the Individual] (from when [Ms. F and the Individual] dated), and the office was tense. I just agreed with people saying [the Individual’s] behavior was inappropriate.” Ex. 13I at 2. However, Ms. E’s signed statement also indicates that when the investigator asked Ms. E “Did [the Individual] ever demonstrate what sexual harassment is to you?” Ms. E replied by stating:

Yes, the time in my vehicle. [The Individual] tried to advise me about what a boss can do to be inappropriate. We had parked and were talking. Then [the Individual] leaned over the center console to the driver’s seat she was sitting in and asked her how [Mr. B] was treating her. He asked, “Is he sexually harassing you?”. I told him ([the Individual]) no. [The Individual] said, “[Ms. E’s first name], if I tell you your lips look so soft and I really like them, you know that’s sexual harassment, right?”. I was uncomfortable because I wasn’t expecting him ([the Individual]) to say that. I was caught “off guard”.

Ex. 13I at 3. The Individual’s own accounts of the meetings in Ms. D’s office and Ms. E’s truck indicates that, at best, the manner in which he conducted himself in those meetings exhibited poor judgment and a lack of discretion. At worst, the Individual sexually harassed Ms. D and Ms. E. I therefore find that the FR’s finding that the Individual sexually harassed Ms. D and Ms. E raises security concerns.

### **c. Alleged Offensive Conduct Towards Mr. H**

In the sworn written statement provided to the FR investigator, Mr. H states:

[The Individual] came into my office one day asking me, “When is your old ass going to retire?”. [The Individual] continued by asking me, “If I was waiting for them to stick it up my ass.” [The Individual] then proceeded to bend over in front of me, flip his jacket up, spread his butt cheeks, and asked me if this is how I liked it. Astonished by the obscene display [the Individual] presented, I stood from my desk and asked him ([the Individual]), “Where are you from? Where did you come from?! You can leave.” [The Individual] laughed and left the office.

Ex. 13E at 2. The Individual’s signed written statement indicates that he was asked: “Have you ever made rude or offensive gestures (i.e. bending over to show your butt) to employees?” The Individual responded by stating: “No, only things I can say is I’m passionate about my job. I have a direct approach and some people may not like that. I may even curse from time to time. I’m military.” Ex. 13K at 3. At the hearing the Individual denied ever asking Mr. H: “When is your old ass going to retire?” But the Individual never denied bending over in front of Mr. H. The Individual’s hearing testimony was generally not credible, given the number of times he contradicted himself and other evidence in the record.<sup>11</sup> Given the Individual’s lack of credibility and his failure to fully deny Mr. H’s sworn account of the incident, I find that Mr. H’s allegations are adequately substantiated and present security concerns.

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<sup>11</sup> For example, the Individual’s testimony that he had never attempted to initiate a relationship with Ms. F was clearly contradicted by the email he sent Ms. F on June 17, 2022. Tr. at 78; Ex. 13A at 21.

#### **d. Analytical Conclusions**

Even if I were to discard each of the statements of the other employees appearing in the record, I note that the excerpts of the emails discussed above and the Individual's own statements provide sufficient evidence to conclude that the Individual has repeatedly conducted himself in a manner that exhibits a lack of discretion and poor judgment. Moreover, I believe that the weight of the evidence in the record supports a conclusion that the Individual exhibited sexual behavior that reflects a lack of discretion or judgment. Accordingly, I find that the LSO correctly concluded that the Individual's behavior reflected a lack of discretion or judgment on the Individual's part which raises significant security concerns under Guideline D.

The Adjudicative Guidelines provide that there are five conditions that could mitigate security concerns under Guideline D.

First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline D if they can show the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature. Adjudicative Guidelines at ¶ 14(a). However, mitigating factor (a) is not applicable in the present case since the behavior began occurring when the Individual was a middle-aged adult.

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline D if they can show "the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment." Adjudicative Guidelines at ¶ 14(b). However, mitigating factor (b) is not applicable in the present case since the FR findings sufficiently established that the Individual's sexually inappropriate behavior in the workplace occurred on numerous occasions, affecting several victims, and the Individual refuses to acknowledge that his behavior was problematic, casting significant doubt on his current reliability, trustworthiness, and judgment.

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline D if they can show "the behavior no longer serves as a basis for coercion, exploitation, or duress." Guideline D at ¶ 14(c). However, mitigating factor (c) is not applicable in the present case because the Individual, through his unwillingness to acknowledge the problematic nature of his behavior, has not shown that such behavior is unlikely to recur and therefore a risk exists that his future behavior may serve as a basis for coercion, exploitation, or duress.

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline D if they can show "the sexual behavior is strictly private, consensual, and discreet." Adjudicative Guidelines at ¶ 14(d). However, mitigating factor (d) is not applicable in the present case because the Individual's behavior was not strictly private and discreet since it occurred at the workplace or using DOE communications equipment.

Fifth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline D if they can show they have "successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance

with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.” Adjudicative Guidelines at ¶ 14(e). However, mitigating factor (e) is not applicable in the present case because, the Individual does not acknowledge the problematic nature of his behavior and has not enrolled in a treatment program.

Accordingly, I find that the Individual has not mitigated the security concerns raised by his behavior under Guideline D.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline D, but not Guideline E. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guideline D. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense 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