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

In the Matter of: Personnel Security Hearing

Filing Date: October 3, 2024

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Case No.: PSH-25-0006

Issued: March 18, 2025

## Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<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 should not be granted access authorization.

## I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires a security clearance. In July 2023, the Individual submitted a Questionnaire for National Security Positions (QNSP) as part of his security clearance application. The DOE Local Security Office (LSO) determined that the Individual failed to disclose information in the QNSP and during interviews with an investigator, including that he had failed to file tax returns for several years, that he had an outstanding delinquent debt, and that he had violated a restraining order. The LSO also requested that the Individual be evaluated by a DOE-consultant psychiatrist (DOE Psychiatrist). Based on the information gathered by the LSO, including a report produced by the DOE Psychiatrist, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guidelines E, F, G, and I of the Adjudicative Guidelines.

<sup>1</sup> The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the DOE Psychiatrist. The Individual submitted one exhibit, marked Exhibit A. The LSO submitted thirteen exhibits, marked Exhibits 1 through 13.<sup>2</sup>

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

As indicated above, the LSO cited Guideline E (Personal Conduct), Guideline F (Financial Conduct), Guideline G (Alcohol Consumption), and Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1.

Guideline E provides 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. "Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." *Id.* 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, . . . [or] determine national security eligibility or trustworthiness . . . ;
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator, security official, . . . or other official government representative;
- . . .
- (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: . . . a pattern of dishonesty or rule violations[.]

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<sup>2</sup> References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

*Id.* at ¶ 16.

The SSC recounts the following information. In the 2023 QNSP, the Individual did not disclose that he had failed to file his 2018, 2021, and 2022 tax returns. Ex. 1 at 5. He also failed to disclose in the QNSP that he had a debt turned over to collections. *Id.* During an interview with an investigator, the Individual reported that he had complied with the terms of a restraining order that he disclosed in the QNSP, but he later admitted that he had violated that order. *Id.* Additionally, he provided inaccurate information regarding the circumstances surrounding his restraining order. *Id.* at 6. In a May 2024 Letter of Interrogatory (LOI) the Individual reported that he only had outstanding federal tax debt for tax years 2021 and 2023, but he also had outstanding federal tax debt for tax years 2012 through 2016. *Id.* at 5. In the same LOI, he reported that all of his past tax returns had been filed, but he later disclosed that he had not filed tax returns for years 2007, 2008, 2009, 2011, 2017, and 2018. *Id.* The cited information justifies the LSO's invocation of Guideline E.

Guideline F provides that an individual's "[f]ailure 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." Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern include an individual's "inability to satisfy debts"; "unwillingness to satisfy debts regardless of the ability to do so"; "history of not meeting financial obligations"; and "[f]ailure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required . . ." *Id.* at ¶ 19 (a)–(c), (f). The SSC cites that the Individual has not filed state tax returns for tax years 2007, 2008, 2009, 2011, 2017, and 2018. Ex. 1 at 6. The SSC further cites that the Individual owes the U.S. Internal Revenue Service (IRS) tens of thousands of dollars for tax years 2012 to 2016, 2021, and 2023. *Id.* Lastly, the SSC cites that the Individual has three delinquent financial accounts that total \$15,585. *Id.* The cited information justifies the LSO's invocation of Guideline F.

Guideline G provides that "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern includes "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder . . ." *Id.* at ¶ 22(d). The SSC cites that the DOE Psychiatrist concluded in a July 2024 report (Report) that the Individual met sufficient criteria under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, for a diagnosis of Alcohol Use Disorder (AUD), Moderate Severity, without adequate evidence of rehabilitation or reformation. Ex. 1 at 7. The cited information justifies the LSO's invocation of Guideline G.

Guideline I provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. "A formal diagnosis of a disorder is not required for there to be a concern under this guideline." *Id.* Conditions that could raise a security concern include "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness . . ." *Id.* at ¶ 28(b). The SSC cites that the DOE Psychiatrist concluded that the Individual "has exhibited behavior that may be consistent with significant interpersonal dysfunction and may be

consistent with a Personality Disorder[.]” and the Individual’s decision making surrounding his financial and interpersonal circumstances are “likely due to personality characteristics of immaturity, impulsivity, and poor planning[.]” which are “conditions that can impair his judgment, stability, reliability, or trustworthiness.” Ex. 1 at 7. The cited information justifies the LSO’s invocation of Guideline I.

### **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 or her 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. *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**

#### **Failure to File and Pay Taxes**

When the Individual submitted his July 2023 QNSP, he disclosed that he did not file income tax returns for the state of his residence (State) from 2012 through 2017 in response to the question whether he had, in the last seven years, failed to file or pay federal or state taxes. Ex. 12 at 143. He also reported in the QNSP that he subsequently filed those State returns and paid the related \$35,000 tax liability in 2021. *Id.* (indicating the State placed a lien on his paycheck). He did not identify any other failure to file tax returns or pay taxes within the seven-year timeframe. *See* Ex. 12. However, during a subsequent interview with an investigator in August 2023 (ESI), the Individual disclosed that he failed to file a tax return or pay tax liability for 2021 and 2022. Ex. 13 at 223. These instances should have been disclosed in the QNSP because they fall within the seven-year reporting period. *See* Ex. 12 at 143. The Individual explained during the ESI that he satisfied the above tax liability for 2012 through 2017 as a result of the State garnishing his wages. Ex. 13 at 223.

Approximately one year after the ESI, the Individual disclosed in the May 2024 LOI that he, in fact, did not file his 2021 and 2023 State and federal tax returns until May 2024. Ex. 6 at 29–30. He also disclosed in the LOI that he owed the IRS \$3,759 for tax year 2023 and \$1,250 for tax year 2021. *Id.* at 30–31. When responding to the LOI question whether there are “any other tax years in which you have failed to file” the Individual reported “all pass [sic] taxes have been filed to the best of my knowledge.” *Id.* at 31. He further reported that he did not owe any additional federal tax debt beyond the amount he identified for tax years 2023 and 2021. *Id.*

A State Tax Account Summary dated May 31, 2024, demonstrates that the Individual had not yet filed a State tax return for 2007, 2008, 2009, 2011, 2017, and 2018. Ex. 9. Furthermore, an IRS Account Balance Statement generated after March 2024 demonstrates that the Individual owed the IRS \$17,248 for tax year 2016; \$18,044 for tax year 2015; \$16,359 for tax year 2014; \$3,240 for tax year 2013; and \$774 for tax year 2012. Ex. 8 (while the document is undated, it does state that the due date had passed for filing a 2023 federal tax return; thus, this report was likely generated after March 2024 given the annual April deadline for filing federal tax returns).

At the hearing, the Individual testified that his delinquent tax liability resulted from his ex-wife’s refusal to have taxes withheld from her paycheck and therefore their joint tax bill was “massive.” Transcript of Hearing, OHA Case No. PSH-25-0006 (Tr.) at 41. The Individual explained that sometime around 2016 the State began garnishing his wages, which prompted him to resolve the outstanding tax liability, and he began filing his returns separately so that his ex-wife would be responsible for her own tax liability. *Id.* at 41–42. However, when asked if he had filed his State tax returns for 2007, 2008, 2009, 2011, 2017, and 2018, the Individual responded by stating, “Most likely no.” *Id.* at 39. He explained that he did not have records for his State tax filings earlier than 2010 and likely did not file a return for 2007. *Id.* at 40. He could not recall whether he filed State tax returns for 2008, 2009, or 2018. *Id.* at 40, 45, 47. But, he testified that he filed his 2011 and 2017 State tax returns. *Id.* at 46. He also testified that he had completely satisfied his tax debt to the State. *Id.* at 44.

As for his federal tax liability, the Individual believed that he still owed \$18,000 on the hearing date. *Id.* at 43. He could not recall whether he filed a federal tax return for 2017 or 2018. *Id.* at 43. He testified that he had not yet made any arrangements to satisfy any outstanding federal tax debt. *Id.* at 44. He also testified that he failed to disclose that he did not file his federal and State 2018, 2021, and 2022 tax returns in the QNSP because he did not have time to thoroughly answer the questions. *Id.* at 47. He testified that he answered the questions to the best of his knowledge and his supervisor did not provide any helpful instructions. *Id.* at 47–50. He also testified that, at the time he submitted the LOI, he believed he had filed all of his delinquent returns. *Id.* at 51. He testified that he planned to first resolve his State tax issues before addressing his federal tax issues. *Id.* at 52.

### Outstanding Consumer Debt

In the 2023 QNSP, the Individual reported that he had two delinquent debts which stemmed from vehicle loans. Ex. 12 at 145–46. However, he failed to report a third debt that was assigned to collection in October 2020. *See id.* at 145–47. A July 2023 credit report indicates that the Individual had a 2020 collection account with a balance of \$1,375, a 2016 vehicle loan charge off

account with a balance of \$6,420, and a 2020 vehicle loan repossession account with a balance of \$7,790. Ex. 7 at 59–60. In the May 2024 LOI, the Individual provided additional information regarding these three debts. He reported that he disputed the collection account for \$1,375. Ex. 6 at 33. As for the vehicle loan debts, he reported that he had not yet taken any action but intended to “try to resolve” them. *Id.* at 35–36.

At the hearing, the Individual acknowledged the legitimacy of the \$1,375 debt. Tr. at 25. He testified that he had not yet made any payments toward this debt but intended to pay it by the end of 2025. *Id.* He explained that while the debt is legitimate, he has disputed it because he believes that he would not be legally responsible for it due to the passage of time. *Id.* at 30. He also testified that he failed to list it on his QNSP because he was under time pressure from his employer to complete the questionnaire and could not ensure the information was thorough. *Id.* at 28. He also stated that his supervisor told him to hurry and complete it and that he could address any issues during the investigation process. *Id.*

As for the \$6,420 delinquent account, the Individual testified that he had reached an agreement with the creditor a week before the hearing to settle the balance for the significantly reduced amount of \$999. *Id.* at 31 (referencing Ex. A, which confirms the settlement amount and terms). He testified that the first payment was due a few days after the hearing and that he would be able to make the payment. *Id.* at 32. He explained that the debt resulted from an automobile loan he could no longer afford as a result of the State garnishing his wages in addition to his wages being reduced by about a third. *Id.* at 33. As for the debt of \$7,790, he explained that it represented a loan for a vehicle which needed a major repair one week after he purchased it. *Id.* at 35. The vehicle continued to have issues and eventually stopped working after about a year. *Id.* The Individual testified that several parties attempted repairs, but ultimately it would have cost him \$8,000 to replace the engine. *Id.* at 36. Instead, he forfeited the vehicle back to the dealership and stopped making payments on the loan. *Id.* He testified that he did not presently have any plans to resolve the balance. *Id.* at 37. However, he believes he is presently in a better financial position after reducing his rent by \$1,000. *Id.* at 39.

### Restraining Order

In the QNSP, the Individual disclosed that he was subject to a five-year domestic violence restraining order. Ex. 12 at 141. The record indicates that his ex-wife obtained the restraining order in October 2021. Ex. 13 at 245. The restraining order prohibits the Individual from contacting his ex-wife and her family, including their adult daughter. *Id.* During the 2023 ESI, the Individual discussed the restraining order, but he reported that there was no particular reason that led to his ex-wife obtaining it. *Id.* at 223. For example, he reported that the police told him his ex-wife felt “unsafe to go home,” but he told the investigator that he did not know why she would have felt unsafe. *Id.* He also told the investigator that he had followed the order. *Id.* However, after being confronted with additional information during a subsequent interview in February 2024, the Individual admitted that his ex-wife sought the restraining order after he damaged her property out of anger due to her infidelity, and he admitted that he got into one other previous altercation with his ex-wife that led to police involvement. *Id.* at 225 (explaining that police contacted him after he had confronted his ex-wife over collecting mail). He stated that he did not provide these details during the ESI because he forgot them at the time. *Id.* However, when later asked to provide information in the LOI regarding the circumstances that led to the restraining order, he again

omitted the details of destroying his ex-wife's property. Ex. 6 at 45 (stating only that he asked his ex-wife if she loved another man and she filed for divorce). He also failed to note the prior meeting with police in the LOI when he answered "No" to the questions asking whether law enforcement had ever contacted him or responded to his residence pertaining to any acts of domestic violence or disturbance. *Id.* at 48–49. He did admit in the LOI, however, that he had violated the restraining order by emailing his ex-wife in December 2021 and by emailing his daughter in June 2022. *Id.* at 47.

At the hearing, the Individual testified that he knew contacting his ex-wife and daughter violated the restraining order. Tr. at 61. He stated that, irrespective of the restraining order, he is "always going to say happy birthday to [his] kids." *Id.* at 60. He said that he is very emotional when it comes to family. *Id.* He testified that, in the future, he will "say" happy birthday and not "email it." *Id.* at 63. The Individual did not believe he omitted any information regarding the restraining order when speaking with the ESI investigator because he believed he truthfully answered the questions that were presented to him. *Id.* at 61. The Individual testified that during the ESI the investigator refused the Individual's offer to provide a copy of the restraining order, and the investigator did not ask him a direct question about the basis for the restraining order. *Id.* at 70.

#### Alcohol Use

The Report indicates that the DOE Psychiatrist evaluated the Individual and diagnosed him with AUD, Moderate Severity, in July 2024. Ex. 10 at 83. Although during the evaluation the Individual denied every symptom of AUD related to alcohol use, the DOE Psychiatrist relied on the following information to support his opinion. *Id.* The Individual previously sought alcohol treatment in 2010 and acknowledged that, at that time, he made bad decisions when consuming alcohol. *Id.* at 78. The Individual said that in 2010 the treatment provider recommended that he "commit to six months . . . [,]" but he did not have the ability to spend six months at the program, so he decided to stop consuming alcohol on his own. *Id.* He claimed that he abstained from alcohol thereafter for three years. *Id.* However, according to the ex-wife's statements obtained by an investigator, the Individual consumed up to four beers per day each week from approximately 1991 until 2017, and, on the weekends, he consumed rum and beer to intoxication. *Id.* at 80. During the evaluation, the Individual reported that he consistently consumed four ounces of whiskey four to five times per week. *Id.* at 75. He disclosed that in 2021 his daughter had expressed concern regarding his alcohol use. *Id.* at 78. He also said that he drank to intoxication once every six to eight months and that he was last intoxicated in December 2023 after he consumed eight drinks in seven hours. *Id.* He reported that he last consumed alcohol in May 2024, a few months before the evaluation, in the amount of thirty-two ounces of beer over three hours. *Id.* Furthermore, he acknowledged that his alcohol use had negatively impacted his life by contributing to his divorce, which occurred in 2023. *Id.*

The DOE Psychiatrist noted that it would be unusual for a person with the Individual's reported decades-long history of alcohol consumption to not develop any symptoms of AUD. *Id.* As part of the evaluation, the Individual underwent a Phosphatidylethanol (PEth) test to determine whether he had consumed alcohol within the past twenty-eight days. *Id.* at 81. The results were positive for recent alcohol use at the level of 204 ng/mL, which the DOE Psychiatrist noted as "ten times the positive result threshold" of 20 ng/mL. *Id.* at 81, 83.

At the end of the Report, the DOE Psychiatrist recommended that the Individual could demonstrate adequate evidence of rehabilitation or reformation of his AUD by completing an “intensive and highly structured alcohol recovery treatment program,” attending substance recovery meetings three times per week for six months, remaining abstinent, and undergoing PEth testing monthly to provide evidence of abstinence. *Id.* at 83.

At the hearing, the Individual testified that he had continued to consume alcohol but reduced his consumption to “once every week or two” after receiving the Report and getting feedback from others that his PEth result was “very severe.” Tr. at 11. He testified that the Report opened his eyes and he decided to “start living [his] life” instead of “just drinking and numbing out.” *Id.* He reported that he last consumed alcohol the week before the hearing in the amount of “two shots” of whiskey in an hour to clear his head and stop worrying because he had just completed a “very stressful” work project. *Id.* at 11–13. Prior to that instance, he last consumed alcohol in late November and became intoxicated after consuming “four shots” of whiskey in an hour. *Id.* at 13–14. He testified that Thanksgiving is “hard” because of his daughter’s birthday and he is not able to contact her because of the restraining order. *Id.* at 13. He testified that he had wanted to abstain from alcohol after Thanksgiving “but it didn’t work out.” *Id.* at 12. However, he denied having any alcohol cravings from December until the hearing date. *Id.* He also testified that he had been intoxicated “quite a bit” since the evaluation because his routine had been to come home, drink alcohol, and go to sleep. *Id.* at 15. But, he testified that he “finally understood what was going on” after he received the Report and decided he need to make a positive change. *Id.* He testified that he contacted the same healthcare provider he contacted in 2010 for alcohol treatment, but the provider again recommended six months of treatment, and he again decided that he could not commit to that amount of time. *Id.* at 15–16. He testified that, going forward, he intends to reduce his consumption and still use alcohol to relax. *Id.* at 20–21 (stating “[m]y job . . . is complex . . . and sometimes I need my head, my thought process to go away, . . . . So there’s times where alcohol helps that . . .”).

The DOE Psychiatrist testified that his opinion remained unchanged regarding the diagnosis of AUD and the related recommendations. *Id.* at 88. The DOE Psychiatrist noted that the Individual continued to use alcohol as a coping mechanism for stress and failed to demonstrate an “understanding and taking internal control over . . . recovery and addictive behaviors” rather than letting external factors, such as stress, dictate whether the Individual will consume alcohol. *Id.* at 89. The DOE Psychiatrist concluded that the Individual had a poor prognosis because the Individual had not undergone any treatment or demonstrated a “meaningful time of sobriety.” *Id.*

### Psychological Condition

In the Report, the DOE Psychiatrist concluded that the Individual “exhibited behavior that may be consistent with significant interpersonal dysfunction and may be consistent with a Personality Disorder.” Ex. 10 at 85 (noting that “[a]lthough there are multiple indications that [the Individual] suffers from significant interpersonal dysfunction, . . . there is insufficient information to diagnose [him] with a Personality Disorder . . . .”). The DOE Psychiatrist explained that “[t]he essential feature of a personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture. This enduring pattern is inflexible and pervasive across a broad range of personal and social situations.” *Id.* at 83. The DOE Psychiatrist noted that the Individual’s “decision making surrounding his financial circumstances



and some aspects of his response to interpersonal stressors likely is due to personality characteristics of immaturity, impulsivity, and poor planning which impair his stability, reliability, or trustworthiness.” *Id.*

At the hearing, the DOE Psychiatrist provided more detail regarding the basis for his opinion. He explained that, generally, behavior can evince a concerning personality characteristic if it results in unusual or atypical life consequences. *Id.* at 98. The DOE Psychiatrist then explained that the Individual’s “financial and tax situation” seemed “atypical and indicative of poor planning.” *Id.* at 99. He also noted that police involvement in the Individual’s interpersonal relationships, coupled with the Individual’s violation of the restraining order, demonstrates “unusual behavior that’s having a larger life impact . . . than what is . . . typical . . . .” *Id.* at 99. Lastly, the DOE Psychiatrist testified that the Individual could address his personality characteristics by undergoing psychotherapy to help him understand his “dynamics in relationships, how [he] interacts with the world, and how [he] can learn to understand [his] impulses and interpretation of events and interactions in a way to take more control over [his] behaviors . . . .” *Id.* at 94.

## **V. ANALYSIS**

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

Conditions that can mitigate security concerns based on personal conduct include the following:

- (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.

I conclude that none of the above mitigating conditions apply to resolve the Guideline E concerns.

Paragraph 17(a) does not apply to resolve the concerns because there is no evidence in the record that the Individual made accurate corrections to the information he provided in the QNSP, during the interviews, or on the LOI regarding his tax returns, delinquent debts, or his restraining order—aside from disclosing the violations—before being confronted with the facts.

Paragraph 17(b) is inapplicable because the Individual has not demonstrated that his conduct was caused or contributed to by advice of legal counsel or a person with professional responsibilities for advising or instructing him specifically concerning security processes. The Individual did not provide any evidence that indicates his failure to report information during his interviews or on the LOI was caused or contributed to by the advice of any person. Thus, ¶ 17(b) does not apply to a substantial portion of the derogatory information listed in the SSC. However, he did provide testimony that his supervisor instructed him that he could clarify any issues in the QNSP regarding delinquent debt after he completed and submitted it. I conclude that this guidance from his supervisor, if true, does not excuse his behavior. First, I am not confident that his supervisor is a person responsible for giving specific guidance concerning the security process. Second, I am not persuaded the alleged guidance is the reason for his failure to report derogatory information. If the Individual had in good faith followed the purported guidance of his supervisor, he would have put forth reasonable effort to determine the correct status of his delinquent tax filings so he could respond accurately to any follow-up questions. Instead, he continued to provide inaccurate information. For example, he reported in the LOI that he had filed all of his State returns. Then, on the hearing date, he claimed that he could not recall whether he filed his 2008, 2009, or 2018 State returns. The State Tax Account Summary indicates, however, that he never filed State returns for those years and others. I do not find the Individual's testimony credible.

Turning to ¶ 17(c), I conclude that it does not apply to resolve the concerns. There is substantial evidence that the Individual is likely to continue to omit or conceal information. First, his pattern of behavior leads me to conclude that his conduct is not minor or infrequent. Standing alone, one incident may be minor—for example, failing to disclose a single delinquent debt on a QNSP. However, that is not the present case. In total, the record demonstrates that the Individual repeatedly failed to disclose accurate information throughout his clearance investigation. In his QNSP, for example, he omitted his recent failure to file tax returns for 2021 and 2022. He also claimed that he had previously failed to file five years' worth of State returns dating back to 2012 but had since filed them; that assertion, as I concluded in my analysis under ¶ 17(b) above, is false. Furthermore, he again provided this false information to the investigator during the ESI and on the LOI by claiming that he had filed his delinquent State and federal returns. Based on the persistent nature of his conduct, I do not conclude that the passage of time nor any unique circumstances mitigate his conduct.

I now address his failure to provide accurate information to the investigator regarding his restraining order. His concealment of that information is not minor, and the passage of time, frequency, or circumstances do not weigh in favor of mitigating his conduct. Significantly, the Individual's testimony demonstrates that he does not think he did anything wrong when he denied knowing the reason his ex-wife sought a restraining order during the ESI and then again in the second interview. I do not find credible his assertion that he forgot the information. By his own account, he offered to provide a copy of the restraining order to the ESI investigator—presumably because it contained the statement of facts that supported the court's decision to issue the order. Arguably, by offering the restraining order, he was offering a written account of the facts that he could not recall during the interview. However, if it is true that the restraining order contained that information, and he had ready access to it, it seems very unlikely that he forgot that information. Furthermore, it seems unlikely that he would forget that he was issued a restraining order because he destroyed his wife's property. It is far more likely that the Individual deliberately omitted information regarding the restraining order in an attempt to avoid any negative consequences. And the Individual made clear at the hearing that he will continue to violate the restraining order if he feels justified in doing so. Thus, I conclude that the Individual is likely to continue engaging in behavior that demonstrates he is untrustworthy, unreliable, and unwilling to comply with rules.

I conclude under ¶ 17(d) that the Individual has not acknowledged his untrustworthy and unreliable behavior nor taken sufficient steps to address the stressors, circumstances, or factors that contributed to it. The Individual did not provide any evidence to demonstrate that he understood that continuing to provide inaccurate information regarding his federal and State tax returns is concerning. Furthermore, the only stressors or circumstances the Individual put forward to explain his conduct was his need to quickly submit the QNSP, which does not explain why he continued to provide inaccurate information during the interviews and on the LOI. Finally, the Individual does not believe he did anything wrong when he withheld information during the ESI regarding his restraining order, nor does he believe he did anything wrong when intentionally violating that order.

The remaining conditions do not apply to resolve the Guideline E concerns for the following reasons. Paragraph 17(e) is inapplicable because there is no allegation in the SSC that the Individual's conduct created a security concern due to his particular vulnerability to exploitation, manipulation, or duress. Paragraph 17(f) is inapplicable because there is no evidence in the record to indicate that the information cited in the SSC under Guideline E is unreliable. Lastly, ¶ 17(g) is inapplicable because the Individual's association with persons involved in criminal activities is not at issue. Accordingly, I find that the Individual has not resolved the Guideline E concerns.

## **B. Guideline F Considerations**

Under Guideline F, the following conditions could mitigate security concerns based on financial considerations:

- (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, . . . divorce or separation . . .), 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.

I find that none of the above conditions apply to resolve the Guideline F concerns. I first find that ¶ 20(a) does not apply because the Individual has not yet resolved or made arrangements to resolve two of the three delinquent accounts listed in the SSC. Furthermore, the Individual presently possesses significant, unresolved federal tax liability.

I also find that ¶ 20(b) does not apply for the following reasons. First, regarding his consumer debt, it is not clear that it resulted from circumstances beyond his control. Regarding the collection account, he did not provide an explanation for why he was currently unable to pay the debt and it remained unresolved on the hearing date. As for the first vehicle loan, while he tried to excuse his delinquency by the fact that his wages were reduced and garnished, they were garnished as a result of his failure to pay State taxes and he is responsible for the consequence of that failure. While he attempted to blame his ex-wife for not contributing her share of the tax burden, he did not go so far as to say that she deceived him. And even if she had, he has been divorced from her since 2023 and has not explained why, since then, he has not resolved this debt. Lastly, I find that the second vehicle loan default did not result from circumstances beyond his control because he did not provide an explanation to support such a conclusion. Turning to the second element of this factor, whether he acted reasonably given the circumstances, I find that in each case he did not. Regarding the collection account, he has done nothing to resolve the debt. While he did provide testimony that he disputed it, he provided no evidence to corroborate this self-serving testimony and, in any event, he has chosen to wait it out with the hope that ignoring the issue will, in time, make the debt uncollectable. This does not demonstrate responsible conduct. Regarding the outstanding vehicle loan, again, he has done nothing to address the debt. Lastly, regarding the vehicle loan he has made arrangements to settle, he only took that action on the eve of the hearing and, as seen above, he has a history of avoiding responsibility for his conduct and providing dubious information regarding his past conduct. I therefore have little confidence that he will follow through with this

agreement. For these reasons, I find that ¶ 20(b) does not apply to resolve the delinquent credit accounts. Because the Individual's delinquent tax liability is properly addressed under ¶ 20(g), I address those concerns and make appropriate findings thereunder below.

Next, I find that ¶ 20(c) does not apply because the Individual has not received and is not receiving financial counseling from any source. Neither does ¶ 20(d) apply because, while the Individual made arrangements to resolve one of his three creditor accounts, he has not yet made a payment, and, based on his history of failing to take action to address his delinquent debt, I am not persuaded he has demonstrated good-faith adherence to this agreement.

Turning to ¶ 20(e), it does not apply because the Individual does not dispute the legitimacy of his delinquent debt. Instead, for the one collection account, he disputed whether the creditor will be able to enforce the legitimate debt, which does not demonstrate a legitimate dispute.

Paragraph 20(f) is patently inapplicable because the concerns outlined in the SSC are not based on unexplained affluence.

Finally, ¶ 20(g) does not apply to resolve the concern because the Individual has not convincingly established that he made any arrangements with federal or State tax authorities to resolve his present delinquent debt or file his outstanding returns. He admitted that he has not made arrangements to resolve his federal debt, and he could not confirm whether he had filed his delinquent State returns.

### **C. Guideline G Considerations**

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

I conclude that none of the above mitigating conditions apply to resolve the Guideline G security concerns. I find that ¶ 23(a) does not apply because that mitigating condition is based on the passage of time, infrequency of the conduct, or unusual circumstances under which the conduct occurred such that the concerning conduct is unlikely to recur. Here, I am persuaded by the DOE Psychiatrist's opinion that the Individual continues to use alcohol to cope with stress and that the prognosis of his AUD is poor. Accordingly, I conclude that the concerns are not mitigated by the passage of time or infrequency of the behavior or unusual circumstances. Based on my above reasoning, I do not conclude that his behavior is unlikely to recur or does not cast doubt on his reliability, trustworthiness, or judgment.

Second, I find that ¶ 23(b) does not apply to resolve the security concerns. I first note that the Individual acknowledged his pattern of maladaptive alcohol use because he testified that he understood, through talking with others, that his alcohol use was concerning. However, he did not show that his subsequent actions were in accordance with treatment recommendations. He did not participate in any of the treatment recommended by the DOE Psychiatrist, nor did he demonstrate a period of abstinence as of the hearing. The record, therefore, does not demonstrate a clear and established pattern of abstinence in accordance with treatment recommendations.

Lastly, I find that ¶ 23(c) and ¶ 23(d) do not apply because the Individual is not currently participating in a counseling or treatment program, he has not successfully completed a treatment program or required aftercare and, as stated above, he has not demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations.

#### **D. Guideline I Considerations**

Under Guideline I, the following relevant conditions can mitigate security concerns associated with a psychological condition:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

I find that none of the above conditions apply to resolve the Guideline I concerns. Because I rely upon much of the same evidence in reaching my conclusion under the above mitigating factors, the following analysis addresses them together. While the DOE Psychiatrist indicated that the Individual's conditions could be improved with psychotherapy, the Individual has not received any treatment or entered into or completed any counseling to address his conditions. Furthermore, there is no evidence in the record to establish that the conditions were temporary. Lastly, the DOE Psychiatrist did not give a positive prognosis or opine that the Individual's conditions are under control or have a low probability of recurrence. Accordingly, I conclude that the Individual has not resolved the concerns that derive from his personality characteristics of immaturity, impulsivity, and poor planning.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E, Guideline F, Guideline G, and Guideline I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns. Accordingly, I have determined that the Individual should not be granted access authorization.

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

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals