

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

In the Matter of: Personnel Security Hearing)	
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Filing Date: November 7, 2024)	Case No.: PSH-25-0022
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Issued: March 26, 2025

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. On March 27, 2024, the Individual was arrested and charged with seven counts of Theft of Property. Exhibit (Ex.) 6 at 24;² Ex. 7 at 41–43. The LSO subsequently issued a Letter of Interrogatory (LOI) to the Individual, which sought additional information related to the charges. Ex. 9. The Individual responded to the LOI in May 2024 and asserted that he had “seen no proof” of the alleged offenses. *Id.* at 66. The LSO issued the Individual a second LOI, which he completed in August 2024. Ex. 8. In that LOI response, the Individual represented that the “district attorney [was] dismissing and dropping all charges against [him].” *Id.* at 61–63.

Due to the unresolved security concerns related to the Individual’s arrest that were not resolved by his responses in the May and August 2024 LOI responses, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding

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

² The exhibits submitted by the DOE were Bates numbered in the upper right corner of each page. This decision will refer to the Bates numbering when citing to exhibits submitted by the DOE.

his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

In October 2024, the Individual requested an administrative hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as 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 five witnesses called by the Individual, including the Individual, three co-workers, and his wife. *See* Transcript of Hearing, Case No. PSH-25-0022 (Tr.). The Individual submitted 23 exhibits, marked as Exhibits A through W. Counsel for the DOE submitted ten exhibits, marked as Exhibits 1 through 10, and did not present any witnesses.

II. The Summary of Security Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization under Guideline J of the Adjudicative Guidelines. Ex. 1. Guideline J provides that "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under this guideline include "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted." *Id.* at ¶ 31(b). The LSO alleged that the Individual was charged with seven counts of Theft of Property (Shoplifting) less than \$1,000 in March 2024. Ex. 1 at 5. The LSO further alleged that the charges were based on seven separate occasions in which he failed to scan and pay for \$772.32 worth of merchandise, and detailed the specific items, prices, and dates on which the alleged shoplifting occurred. *Id.* Based on this allegation, I find the LSO's security concerns under Guideline J are justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

The record includes a March 2024 report from the local police department (“Police Report”), which indicates that the Individual was “seen on store surveillance taking and not paying for” various specified grocery items totaling \$772.32 on seven separate occasions between January 26, 2024, and March 17, 2024. Ex. 7 at 55–56. The local police department subsequently issued warrants for the Individual’s arrest, and on March 27, 2024, the Individual turned himself in to the courthouse, was arrested, and was charged with seven counts of Theft of Property. Ex. 6 at 24; Ex. 7 at 41–43, 56. In the August 2024 LOI response, the Individual represented that he had not seen any video evidence of these alleged offenses, even though he had asked to view them, and stated that his lawyer and the district attorney indicated that his conduct “was an honest mistake . . . [,] human error[,], and computer error.” Ex. 8 at 61.

At the hearing, the Individual and his wife testified that they shopped at the grocery store on March 22, 2024, and as the Individual was loading the groceries into the vehicle, two police officers approached and asked him to accompany them back into the store. Tr. at 47, 120. One of the police officers checked the Individual’s receipt on that day against what he had loaded into the vehicle, and everything was paid for. *Id.* at 120, 122. The Individual testified that when taken back into the store, he offered the security guards there that he would pay for any of the items allegedly previously taken without paying, if they could show him proof that he did not pay, but they refused to show him any video. *Id.* at 120–21. They did show him a picture from a video and asked him to identify himself. *Id.* at 121. After that, they asked him to sign a statement that he would not patronize any of their stores again. *Id.* He signed that statement and avowed at the hearing that he has never returned to any branch of that grocery store again, although his wife has returned to purchase sale items. *Id.* at 91.

Also at the hearing, the Individual and his wife stated that they used the self-checkout at the store because there were only two cashiers, and it was always very crowded at the time they shopped. Tr. at 80, 93. The Individual’s wife testified,

It’s kind of really chaotic. There’s just a lot of people everywhere you look, you have to watch where you’re going, there’s so many people. It can be crazy. And it’s not like a huge [store], so there’s a lot of people in, like, this little area all trying to checkout at the same time. And they don’t give you hardly any space on these self checkouts. . . . It’s very chaotic.

Id. at 83–84. The Individual repeated that it can be hectic at the store stating, “it can be chaotic, crazy, busy.” *Id.* at 93. They both detailed that their now ten-year-old son had been helping the Individual with the scanning of the items, while the Individual’s wife watched their now one-

year-old and two-year-old sons. *Id.* at 79, 113–15. The wife asserted that by the time they finished shopping but before paying, the older of the two babies was very fussy and ready to leave, so he needed attention. *Id.* at 80. The Individual and his wife speculated that perhaps in the rush to finish checking out and allowing their son to help, they may have missed some items. *Id.* at 79, 113–15. The Individual testified that he did not check the receipts for accuracy and did not calculate how much he should be paying for the groceries that he was purchasing. *Id.* at 93. The Individual and his wife both stated that he does not shoplift and speculated that perhaps in the confusion of the self-checkout, the son neglected to scan an item, and the Individual did not notice. *Id.* at 47, 51, 79, 91, 95. Further, the Individual’s wife claimed that shoplifting would be inconsistent with their religious values. *Id.* at 69. The Individual testified that, although they still use self-checkout where they shop, he is much more vigilant and careful regarding supervising his son. *Id.* at 96.

The Individual contacted an attorney after he was stopped by the police on March 22, 2024, and signed the no trespass statement at the store. Tr. at 122; Ex. 7 at 59. The lawyer informed the Individual that there was an outstanding warrant out for his arrest, so he turned himself in on March 27, 2024. Ex. 6 at 24; Ex. 7 at 41–43, 56, 58, 59; Tr. at 122, 124. He was charged with seven counts of shoplifting over a period of two months. Ex. 7 at 45–52, 55–56. The total amount he was charged with shoplifting was \$772.32. *Id.* at 56. The Individual presented evidence from the court that he was placed in monthly pre-trial supervision on March 28, 2024. Ex. F at 16. Further, that evidence shows that he met all the requirements of the pre-trial supervision, including that he not reoffend, report in person five times, call every Monday, and pass all drug screens. *Id.*

The Individual stated that the charges against him were dropped, and he eventually had them expunged. Tr. at 98; *see also* Ex. D (expungement orders); Ex. F (stating that all charges were dismissed on August 7, 2024); Ex. G (letter from the Individual’s attorney for the shoplifting charges, stating that the charges were dismissed and an expungement entered); Ex. Q (certified copies of the expungement orders). The Individual testified that he completed community service, made restitution to the store, and paid court costs, and that is supported by the exhibits he provided. Tr. at 92, 99, 105; Ex. E (showing the completed community service hours); Ex. G (letter from the Individual’s attorney indicating the community service was a condition of dismissal). He claimed that he was told the community service was to offset some of the court costs. Tr. at 128. The Individual asserted that, although he asked for it, he never saw any video evidence of him not scanning an item. *Id.* He claimed that the day he was stopped by the police and asked to return to the store, he offered to pay for the missed items if the store would show him the video, and they refused. *Id.* at 113, 121. The Individual indicated that the store personnel seemed more interested in having him sign a no trespass statement. *Id.* at 121.

The Individual testified that,

And, you know, I’ve never been in trouble in my life. You know, speeding ticket,
I think I’ve had two in my life. Other than that, you know, never been in trouble

with the law. It's opened my eyes. I mean, I will say that. More cautious. And I just want to set, you know, a good example for my boys, you know. That's it, you know. And sorry, I just – I get emotional sometimes.

Tr. at 108. This information is supported by his background investigation and his May 6, 2024, LOI, where he stated that he had a speeding ticket. Ex. 9 at 68; Ex. 10 at 89, 165 (OPM report showing no record prior to September 16, 2021).

The Individual declared that he is now more vigilant when he uses self-checkout, which he tries to avoid. Tr. at 96, 125–26. “[W]e are definitely more careful now. And I – there’s a lot of times that I will – we will avoid self checkout, but there’s some instance that, it’s just easier to go through self checkout instead of standing in line with kids.” *Id.* at 96. He asserted that getting arrested was a “big eye-opener for me. [I’ve learned] not to be so relaxed.” *Id.* at 125. He continued that being charged with a crime was a shock to him, and he’s learned to be more vigilant and more aware of the possibility of not scanning something than he was before. *Id.* at 126.

The Individual’s co-worker and friend testified that he has known the Individual four years. Tr. at 11. He stated that they see each other daily, and the Individual is always motivated to “do the right thing the first time.” *Id.* at 12. He claimed that the Individual’s reputation at work is very good, and he is known for being honest. *Id.* at 13. He testified that,

Everybody on our site is watched. You’re watched daily. We have [the LSO] that watches us, DOE that watches us, work colleagues that watch us, management that watch us. We are our brother’s keeper, and that goes a long way. So, eyes are on us all the time. [The Individual] and myself, anybody that’s on site doing work, managing the work, setting our precautions, you know, so there’s always eyes on you.

Id. at 12–13. The co-worker and friend continued that he did not know anyone who questioned the Individual’s integrity. *Id.* at 13. The co-worker and friend asserted that the Individual called him from court during his first hearing and stated that the store and district attorney offered to drop the shoplifting charges if he pled guilty to a criminal trespass charge. *Id.* at 23. The co-worker and friend advised against doing that because he was not guilty of that charge. *Id.* at 24. He claimed that within four minutes the Individual called him back to inform him that all the charges had been dropped. *Id.* at 25.

The Individual’s supervisor and a second co-worker also testified to the Individual’s integrity and honesty. Tr. at 30, 36. They reiterated that the Individual always follows procedures. *Id.* at 30–31, 36. The supervisor concluded that he has never known anyone to say anything negative about the Individual. *Id.* at 32. The second co-worker, in addition to testifying, provided a letter in which he stated that, at work the Individual “has consistently demonstrated reliability, integrity, and a strong work ethic.” Ex. L at 29. He continued, “I have complete trust in [the Individual] He has consistently shown himself to be a dependable, honest, and compassionate individual.” *Id.*

V. Analysis

A. Guideline J

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline J:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

The Individual has shown successful rehabilitation under the elements of mitigating factor ¶ 32(d). Although it has only been a year since his alleged shoplifting charge, all charges were dropped and expunged and he has made restitution to the store and complied with all terms of the court both pre- and post-trial, including following the pre-trial supervision requirements, completing community service, and paying the court costs. Additionally, the Individual has a good employment history, as shown by his co-workers' and supervisor's testimony. He has no past criminal history as evidenced by his 2021 background investigation. In addition, the Individual immediately turned himself in upon learning there was a warrant out for his arrest. Finally, I believe the Individual's contention that he has every intention to never shoplift again. His testimony shows that he has learned his lesson.

I conclude that the Individual has mitigated the Guideline J concerns. Adjudicative Guidelines at ¶ 32 (d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I find the Individual has demonstrated that restoring his security clearance would not endanger the common defense and

would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals