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

In the Matter of: Personnel Security Hearing)	
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Filing Date: January 17, 2025)	Case No.: PSH-25-0061
)	
_____)	

Issued: June 6, 2025

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 or Eligibility to Hold a Sensitive Position."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 should not be granted access authorization.

I. BACKGROUND

In 2020, the Individual began working for a contractor (Contractor) as a security police officer which required him to possess a security clearance. Hearing Transcript, OHA Case No. PSH-25-0061 (Tr.) at 12; Exhibit (Ex.) 18 at 127, 154.² In 2021, the Individual resigned from his position with the Contractor in lieu of termination after his supervisor determined that he had violated the Contractor's policies by bringing his personal cell phone and laptop into a limited area (LA) where personal electronics were prohibited and failing to ensure that the LA was alarmed when unattended. Ex. 8 at 35, 37, 40; Ex. 10 at 48; Ex. 19 at 239, 245; Ex. C.

On November 2, 2023, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) as part of seeking DOE access authorization in connection with his employment by a DOE contractor. Ex. 18 at 125–26, 159. In a section of the QNSP concerning prior employment, the Individual represented that he left his employment with the Contractor due to

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 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 DOE.

“school and work hours conflicting” and denied that he was fired, quit after being told he would be fired, or left by mutual agreement following charges or allegations of misconduct. *Id.* at 127–28. A subsequent background investigation of the Individual revealed the circumstances of the Individual’s separation from the Contractor. Ex. 19 at 239, 245.

In May 2024, the local security office (LSO) issued the Individual a letter of interrogatory (First LOI). Ex. 12. In his response to the First LOI, the Individual disclosed that his ex-wife had accused him of sexually assaulting their minor child. *Id.* at 60. The Individual provided additional information regarding the allegations in response to a September 2024 LOI (Second LOI). Ex. 11. In July 2024, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for an evaluation. Ex. 17 at 94. The DOE Psychologist subsequently issued a report in which she concluded that the Individual did not have a condition that could impair his judgment, stability, reliability, or trustworthiness. *Id.* at 100.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 9–10. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E, J, and K of the Adjudicative Guidelines. *Id.* at 6–8.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted nineteen exhibits (Ex. 1–19). The Individual submitted ten exhibits (Ex. A–J).³ The Individual testified on his own behalf. Tr. at 3, 10. The LSO did not call any witnesses to testify.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 6.

Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC alleged that the Individual falsely denied having been fired, quitting after being told he would be fired, or leaving by mutual agreement following charges or allegations of misconduct in describing the circumstances of his separation from the Contractor

³ The Individual did not label his exhibits. I assigned labels to the Individual’s exhibits which I identified on the record at the hearing. Tr. at 6–7.

on the QNSP.⁴ Ex. 1 at 6. The LSO's allegation that the Individual deliberately provided false information on the QNSP justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as another basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 7. "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. The SSC cited the Individual having been investigated for allegedly sexually assaulting his minor daughter. Ex. 1 at 7. The LSO's citation to the Individual having been investigated for alleged criminal conduct justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

The LSO cited Guideline K (Handling Protected Information) of the Adjudicative Guidelines as the final basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 7–8. "Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern." Adjudicative Guidelines at ¶ 33. The SSC cited the Individual having knowingly violated security procedures by bringing personal electronics into the LA on multiple occasions and leaving the LA in an unalarmed status while the area was unattended. Ex. 1 at 8. The LSO's allegations that the Individual failed to comply with rules for the protection of classified or sensitive information justify its invocation of Guideline K. Adjudicative Guidelines at ¶ 34(g).

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 Dep't 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).

An 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

⁴ The SSC also alleged that the Individual willfully "violated multiple procedures and failed to comply with rules and regulations" by bringing his personal electronics into the LA while employed by the Contractor. Ex. 1 at 6. While "a pattern of dishonesty or rule violations" may raise security concerns under Guideline E, such allegations may only do so if the information upon which they are based "is not explicitly covered under any other guideline . . ." Adjudicative Guidelines at ¶ 16(d). As the Individual's rule violations related to bringing personal electronics into the LA are covered under Guideline K, the LSO inappropriately alleged that conduct under Guideline E and I will only address the security concerns presented by the Individual's conduct under Guideline K.

clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

A. Individual’s Resignation from the Contractor and Information He Provided Regarding His Resignation

On May 1, 2021, the Individual was observed watching videos on a personal laptop computer, and attempting to conceal that he was doing so, while in an LA. Ex. 8 at 39 (indicating that the Individual “was observed [behaving] nervously . . . when someone approached his post and would turn off the light[on his laptop] in order to conceal the item”); Ex. 9 at 44; *see also* Ex. 12 at 57, 59 (indicating in response to the First LOI that he brought a personal phone and personal laptop into the LA to perform academic work related to his undergraduate studies); Tr. at 41, 43 (testifying at the hearing that he attempted to use a “blind spot” in the security cameras to avoid detection). The Contractor conducted an investigation of the Individual’s conduct. Ex. 8 at 39–40; Ex. 9 at 44–46. The investigation concluded that the Individual had used his personal electronic devices in the LA for over six hours during a twelve-hour shift. Ex. 9 at 44. The investigation also revealed that the Individual had left an entry/exit point to the LA he was responsible for securing unattended and unalarmed during the shift. *Id.*; Ex. 8 at 39. Based on the results of the investigation, the Individual was allowed to resign in lieu of termination, and the Individual did so on May 12, 2021. Ex. 19 at 239; Ex. C. Another contractor (Prime Contractor) responsible for activities at the site submitted incident reports to the LSO on May 5, 2021, and also submitted a memorandum to the Contractor on May 10, 2021, prior to the Individual’s resignation, describing the Individual’s conduct, advising that the Prime Contractor was restricting the Individual from the site, and indicating that termination of the Individual’s access authorization would be requested because of his “egregious actions” and the Prime Contractor’s determination that he was “neither trustworthy, nor reliable.” Ex. 9 at 42–43; Ex. 10.

The Individual signed and submitted the QNSP on November 2, 2023. Ex. 18 at 159. As part of doing so, the Individual certified that his statements therein were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* In the QNSP, the Individual represented that he had left his employment with the Contractor due to “school and work hours conflicting” and checked a box marked “No” in response to a question asking whether he had been fired, quit after being told he would be fired, or left by mutual agreement following charges or allegations of misconduct in the last seven years. *Id.* at 127–28.

In December 2023, as part of a background investigation into the Individual’s eligibility for access authorization, an investigator interviewed the Individual’s supervisor during the time he was employed by the Contractor. Ex. 19 at 245. The supervisor told the investigator that the Individual had been fired or resigned in lieu of termination for having a personal laptop in the LA. *Id.* On March 1, 2024, during an investigative interview, the investigator confronted the Individual with

the information provided by the supervisor. *Id.* at 239. The Individual told the investigator that he had used his personal laptop in the LA approximately five times to complete academic work related to his enrollment in a college and that he had tried unsuccessfully to obtain permission to use computers on site to perform the academic work before bringing his personal laptop into the LA. *Id.* The Individual also told the investigator that he believed that his misconduct was minor, even though he knew that it was a rule violation, because he did not believe that the information contained in the portion of the LA that he used was significant and “everyone else there did this as well with their phones.” *Id.* at 239–40.

The Individual submitted his response to the First LOI on May 2, 2024. Ex. 12 at 69. In his response to the First LOI, the Individual indicated that he had knowingly violated the rules regarding use of personal electronic devices in the LA because his “grades were suffering” and his long hours working for the Contractor prevented him from performing the academic work in his personal time. *Id.* at 57. The Individual stated that he had chosen to use the personal laptop in the location that he did because it was only a few feet into the LA, he only violated the rule regarding use of personal electronics in the LA “when absolutely needed,” and “had [the Contractor] allowed [him] to have an account on PCs inside the plant, or if the scheduling was ever not 60hrs/week this would not have happened.” *Id.* at 57–58. Additionally, he asserted that “[m]any in management knew [personal electronic use in LAs] was occurring” and that he “personally saw multiple guards using personal Ipads [sic] to watch sporting games and stream movies/tv shows.” *Id.* at 57.

The First LOI also inquired into why the Individual did not indicate on the QNSP that he had quit his job with the Contractor after being told he would be fired or left by mutual agreement following charges or allegations of misconduct. *Id.* at 61. The Individual responded that he “answered this question in th[e] manner that [he] was instructed to answer it by [the Contractor]” and that he “was informed that should [he] comply that this would be deemed a willful resignation not a termination.” *Id.*

At the hearing, the Individual reiterated his previously made statements that there was significant “bending of the rules” regarding the use of personal electronics by employees during his employment with the Contractor. Tr. at 36–37; *see also id.* at 37–38 (describing the use of iPads by other employees when doing so was prohibited to learn election results). According to the Individual, unlike the other employees, he only “really violated” procedures when he “had schoolwork that needed to be done.” *Id.* at 36; *see also id.* at 44 (testifying that other personnel were commonly “playing on their phones”).

The Individual testified that he would not have used personal electronics in the LA had he known “this was what was going to happen,” but he perceived that personal electronics use “was so rampant and well known” that the consequences would be minor because the “culture at that job . . . [was] ‘don’t get caught [.]’” *Id.* at 38–39. The Individual represented that he sought to “mitigate [his rule violation] as much as [he] could” by using personal electronic devices in an area where he perceived that the security ramifications would be minor and that he could have used the personal electronics in more sensitive areas but did not because he perceived that as “a bigger offense.” *Id.* at 41, 43, 51. As to leaving an LA in an unalarmed status, the Individual admitted that he had done so on one occasion by accidentally failing to close a door. *Id.* at 49.

Regarding the circumstances of his separation from the Contractor, the Individual testified that he was told by the Contractor that he could “resign and this goes away, essentially,” or that his employment would be terminated. *Id.* at 34. The Individual claimed that the Contractor told him that there would be “no record of this on their end” if he resigned and that he was “led to believe” that he should respond as he did on the QNSP when he denied that he was fired, quit after being told he would be fired, or left by mutual agreement following charges or allegations of misconduct. *Id.* at 55–56.

B. Allegations of Sexual Assault

In December 2022, the Individual and his wife separated due to infidelity on the part of the Individual. Ex. 19 at 236. Shortly thereafter, the Individual and his wife initiated divorce proceedings which were finalized in approximately June 2023. Ex. 17 at 95; Tr. at 13.

On March 17, 2024, following an exchange of custody of their preschool age daughter, the Individual’s wife took their daughter to a walk-in medical clinic due to the daughter’s symptoms of burning urination and vaginal discomfort. Ex. I at 1. The Individual’s wife told medical practitioners at the clinic that she had concerns regarding potential sexual abuse by the Individual who she represented was a “sex addict.” *Id.*; *see also* Ex. 17 at 96 (indicating that the Individual endorsed prior feelings of sexual addiction during the psychological evaluation with the DOE Psychologist). The Individual’s daughter was referred to an emergency department where she was diagnosed with a urinary tract infection (UTI) and the Individual’s wife and daughter were interviewed by police. Ex. 15 at 84. The law enforcement officers who collected information from the Individual’s wife at the emergency department did not recommend a forensic exam for evidence of sexual assault. *Id.*; *see also* Ex. I at 3–4 (hospital records noting the absence of gross indications of vaginal or anal injury).

On April 17, 2024, the Individual’s wife took their daughter to a pediatrician due to persistent urinary discomfort. Ex. 15 at 84. According to medical records of the visit, “[u]pon entering the [examination] room, [the Individual’s daughter] stated, ‘daddy has been touching my private parts.’” *Id.* During the visit, the Individual’s wife told medical practitioners of specific acts of alleged sexual assault by the Individual that she said the Individual’s daughter had reported to her. *Id.*

By letter dated April 22, 2024, the state authority responsible for investigating allegations of child abuse (State Authority) notified the Individual and his wife that “the case involving [the Individual’s and his wife’s daughter] has been classified as [unsubstantiated] and is in the process of being closed.” Ex. F. The case manager who authored the letter recommended that the daughter receive individual and family counseling. *Id.* The Individual’s daughter began receiving individual and family therapy from a licensed marriage and family therapist (Therapist) on April 30, 2024. Ex. J.

In September 2024, the Individual’s wife took their daughter to a medical provider after a custody exchange with the Individual. Ex. 14 at 78, 82. The Individual’s wife told the clinicians that the daughter had complained of vaginal discomfort and discharge, and that the daughter had told her that the Individual placed his genitals in contact with the area. *Id.* at 78. The clinicians diagnosed

the Individual's daughter with vaginitis. *Id.* at 81. Their examination of the daughter showed "discrete erythema [redness]," of the vaginal area, but did not reveal signs of trauma such as bruising or tearing. *Id.* at 80–81. The clinicians notified the State Authority case supervisor responsible for investigating allegations of child abuse by the Individual of the Individual's daughter's condition. *Id.* at 82.

In response to a question on the First LOI regarding whether anyone had ever questioned his honesty or trustworthiness in situations besides those related to his separation from the Contractor, the Individual disclosed his wife's allegations that he had sexually assaulted their daughter. Ex. 12 at 59–60. The Individual subsequently provided the LSO with records he had obtained concerning the allegations and, in his response to the Second LOI, denied the allegations and speculated that his wife made the allegations because she was "spiteful and [did not] want [him] in the picture." Ex. 11 at 50–51.

By letter dated April 28, 2025, the Therapist indicated that the Individual's daughter had "not been able to provide any statements supportive of reported allegations [of abuse by the Individual] in a spontaneous fashion, including richness of detail that typically accompanies true and reliable reports." Ex. J. She further indicated that the State Authority that investigated the allegations of abuse by the Individual had concluded that the allegations were "unfounded." *Id.* She stated that the Individual had been cooperative with treatment recommendations and that the Individual and his wife "have continued to have conflicts surrounding co-parenting and differences in parenting styles" during their "high conflict divorce." *Id.*

At the hearing, the Individual testified that he was aware of nine discrete occasions on which his wife, his wife's mother, or his daughter alleged that he had physically or sexually assaulted his daughter which had been referred to the State Authority. Tr. at 16, 26, 30–31. According to the Individual, the State Authority had received so many similar complaints from his wife which had been found unsubstantiated that it was "essentially screening these calls out" and not opening new investigations. *Id.* The Individual explained that he believed that this was the case because the first three times that allegations of abuse were made against him, his custody of his daughter was suspended for several weeks while the State Authority investigated. *Id.* at 29, 31–32. Subsequent allegations did not result in suspension of his custody and therefore he believes that the State Authority "screened" the subsequent allegations. *Id.* at 29–30.

The Individual testified that he believed that some of the allegations made by his wife were still open with the State Authority because she had yet to complete required parenting classes, and the State Authority would not close the case until she did so. *Id.* at 18. The Individual denied that he had ever abused his daughter or that he had ever been arrested or charged with any offense related to the aforementioned allegations. *Id.* at 26–27.

V. ANALYSIS

A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The Individual was confronted with the false information that he provided on the QNSP by the investigator, and therefore the first mitigating condition is inapplicable. *Id.* at ¶ 17(a). The second mitigating condition is also inapplicable because, although the Individual claimed that he relied on information provided to him by the Contractor in answering as he did on the QNSP, no Contractor personnel would have been the Individual's legal counsel or a person with professional responsibilities for advising him. *Id.* at ¶ 17(b).

Turning to the third mitigating condition, the Individual asserted in his hearing testimony and response to the First LOI that he provided the information that he did on the QNSP concerning his separation from the Contractor because the Contractor told him that he could describe his separation as voluntary and that there would be no official record of his discipline if he resigned. Thus, the Individual claims that unusual circumstances explain his failure to disclose the circumstances of his separation from the Contractor. There is nothing in the record corroborating the Individual's claim. The fact that the Prime Contractor disclosed the Individual's conduct to the LSO prior to the Individual's resignation, and advised the Contractor of having done so in a memorandum, strongly suggests that the Contractor knew that a record of the Individual's conduct would exist regardless of his resignation. This suggests that the Contractor would not have

represented to the Individual that there would be no record of his conduct and therefore that he could claim to have resigned from his employment with the Contractor voluntarily. However, even if a representative of the Contractor had falsely made such a claim to the Individual, a person exercising the reliability and trustworthiness expected of a clearance-holder would have recognized that an offer to omit or remove evidence of misconduct from official files would not excuse him from disclosing that information on the QNSP. Thus, I find that there are no unusual circumstances that excuse the Individual's statements on the QNSP concerning the reason for his separation from the Contractor.

The omission of the reason for the Individual's separation from the Contractor was not a minor omission. The Individual's conduct leading to his resignation from the Contractor raised security concerns of its own under Guideline K, and the Individual's false statements on the QNSP regarding his separation from the Contractor could have prevented these concerns from being revealed to and adjudicated by the LSO but for the supervisor's disclosure of the information to the investigator. The Individual's false statements are also relatively recent, having occurred approximately eighteen months prior to the hearing. While the Individual's statements on the QNSP are the only instances of untruthful conduct at issue in this proceeding, I find that the significance of the Individual's false statements are such that the isolated nature of the untruthfulness is insufficient to resolve the security concerns. *See* 10 C.F.R. § 710.7(c) (requiring consideration of the "nature, extent, and seriousness of the conduct" in applying the Adjudicative Guidelines). Thus, I find the third mitigating condition inapplicable. Adjudicative Guidelines at ¶ 17(c).

The Individual has attributed partial responsibility for the false information that he provided on the QNSP to the Contractor and has not pursued counseling related to his conduct. Thus, the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d). The fifth mitigating condition is inapplicable to the facts of this case because the LSO did not allege that the Individual's conduct placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is irrelevant because the Individual was the source of the false information in the QNSP. *Id.* at ¶ 17(f). The seventh mitigating condition is also irrelevant because the LSO did not allege that the Individual associated with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

For the aforementioned reasons, I find that none of the mitigating conditions are applicable. Therefore, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Id. at ¶ 32.

The allegations against the Individual under Guideline J are extremely serious. However, the Individual has not been arrested or charged with any crime in connection with the allegations, there is no indication that the State Authority investigating the allegations found any of them to be substantiated, the Therapist offered an opinion casting doubt on the truth of the allegations, and medical evaluations of the Individual's daughter did not provide evidence clearly corroborating the allegations. Moreover, there is some suggestion in the record that the Individual's wife harbored animus against the Individual, given the Individual's marital infidelity and their contentious divorce, that might have motivated her to make false accusations against the Individual. Considering that law enforcement officers, social workers, medical practitioners, and therapists have reviewed the allegations and not taken any actions tending to corroborate them, I find that the third mitigating condition is applicable. *Id.* at ¶ 32(c). Accordingly, I conclude that the Individual has resolved the security concerns asserted by the LSO under Guideline J.

C. Guideline K

Conditions that could mitigate security concerns under Guideline K include:

- (a) so much time has elapsed since the behavior, or it has happened 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 good judgment;
- (b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;
- (c) the security violations were due to improper or inadequate training or unclear instructions; and
- (d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

Id. at ¶ 35.

While the Individual claims that leaving the entry/exit point to the LA in an unalarmed status while it was unattended was an isolated, unintentional occurrence, he intentionally brought his personal laptop into the LA in violation of the prohibition against personal electronic devices at least five times and his personal cell phone numerous other times. Thus, the conduct was not infrequent.

While the Individual cited to his need to perform academic work as the reason for his decision, an ordinary, recurring personal responsibility of this nature does not constitute unusual circumstances for the purposes of the first mitigating condition.

Considering whether the passage of approximately four years since the security violations is sufficient to mitigate the doubt raised as to the Individual's reliability, trustworthiness, and judgment, I note that the Individual had numerous opportunities to accept responsibility for his rule violations in the interview with the investigator, in response to the LOIs, and in the hearing itself. On each of these occasions, the Individual sought to minimize his responsibility for his actions by representing that others were frequently violating the rules for less worthwhile pursuits than academic work, his desire to spend more time on his academic work constituted a "need," there would have been no "need" for his rule violations if his management had accommodated his requests to use site computers for academic work, he mitigated the rule violations by only using the personal electronics in a part of the LA that he deemed to present low security concerns, and his violations of the rules were trivial. The Individual's ongoing effort to justify rule violations based on his subjective assessment of his needs and what he considers to be the security ramifications of his conduct does not suggest that he will comply with rules in the future when he perceives that doing so is inconvenient and, in his opinion, unnecessary. Accordingly, given that the attitudes that led to the Individual's rule violations appear to persist, I find that the passage of four years is insufficient to establish the applicability of the first mitigating condition. *Id.* at ¶ 35(a).

The second mitigating condition is inapplicable because the Individual has not received counseling or remedial security training and, as previously mentioned, does not display an unequivocally positive attitude toward the discharge of security responsibilities. *Id.* at ¶ 35(b). The third and fourth mitigating conditions are inapplicable because the Individual has acknowledged that he intentionally violated the rule regarding the use of personal electronics in the LA, there is no indication that the Individual was trained improperly, and his conduct was detected by the Contractor rather than self-reported. *Id.* at ¶ 35(c)–(d).

For the aforementioned reasons, I find that none of the mitigating conditions under Guideline K are applicable to the facts of this case. Accordingly, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline K.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, J, and K of the Adjudicative Guidelines. After considering all the relevant information, 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 asserted by the LSO under Guideline J but not the security concerns asserted by the LSO under Guidelines E and K. 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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals