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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: May 1, 2025)
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_____)

Case No.: PSH-25-0111

Issued: September 5, 2025

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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

On May 23, 2024, the Individual completed and signed a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 7 at 133.² The Individual disclosed in the QNSP that he filed for bankruptcy in February 2022. *Id.* at 127. He checked boxes marked "No" in response to questions on the QNSP asking whether he had filed any additional petitions for bankruptcy or fallen into delinquency on any other routine financial accounts in the prior seven years. *Id.* at 128–29. The Individual additionally disclosed that he had been arrested in 2022 and 2023 on bench warrants for failing to attend court dates and that he had been arrested and charged with Driving Under the Influence (DUI) in 2009. *Id.* at 121–24. He checked a box marked "No" in response to a question asking whether he had ever been charged with any offense involving a firearm or any other offenses regarding alcohol. *Id.* at 125. The Individual also disclosed his employment history, including that he separated from an employer (Employer A) in 2021 due to "unsatisfactory performance" and was employed by an employer

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 local security office (LSO) 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 LSO.

(Employer B) from 2021 to 2023 when he “[l]eft by mutual agreement following notice of unsatisfactory performance.” *Id.* at 102–04.

As part of a background investigation of the Individual’s eligibility for access authorization, the Office of Personnel Management obtained a credit report for the Individual. Ex. 5. The credit report revealed that the Individual had filed for bankruptcy in November 2021 and February 2022, and that the Individual owed numerous delinquent debts totaling \$71,677. *Id.* at 33–40. The credit report additionally indicated that the Individual was over one hundred twenty days past due on a home mortgage and owed over \$7,000 in past due mortgage payments. *Id.* at 41. A review of criminal records revealed numerous instances in which the Individual was arrested or cited for unlawful conduct, including a 2006 charge for carrying a concealed firearm while under the influence of alcohol or drugs (Firearm Offense) and four instances in which he was arrested and charged with DUI from 1994 to 2010 which he failed to disclose on the QNSP. Ex. 8 at 229–34. The criminal records also revealed that the Individual was charged with the theft of an electronic device from Employer A in 2022. *Id.* at 225, 227–28.

The Individual was interviewed by an investigator on July 30, 2024, as part of the background investigation. *Id.* at 197. During the interview, the Individual volunteered that he was fired by Employer B rather than having left by mutual agreement following notice of unsatisfactory performance. *Id.* at 198. In December 2024, the local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the security concerns presented by the information in the QNSP and uncovered during the investigation. Ex. 6. The Individual’s responses to the LOI did not resolve the security concerns.

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, F, and J of the Adjudicative Guidelines. *Id.* at 4–8.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 12–13. 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 on August 20, 2025. The LSO submitted eight exhibits (Ex. 1–8). The Individual submitted seven exhibits (Ex. A–G). The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-25-0111 (Tr.) at 3, 9. 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 5–6. “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 cited the Individual having

left his employment with Employer A and Employer B due to poor performance and having failed to accurately disclose on the QNSP: (1) the circumstances of his separation from Employer B, (2) having been arrested and charged with the Firearm Offense, (3) four occasions on which he was arrested and charged with DUI, (4) the fact that he had filed for bankruptcy in November 2021, and (5) his numerous delinquent financial accounts. Ex. 1 at 5–6. The LSO’s allegations that the Individual’s employment history demonstrated a pattern of rule violations and that the Individual deliberately omitted, concealed, or falsified information on the QNSP justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a), (d)(3).

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the second basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 6–7. “Failure 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. The SSC cited the Individual’s November 2021 bankruptcy petition, which was dismissed for failure to pay, nineteen delinquent consumer debts on which the LSO alleged that the Individual owed a cumulative \$71,677, and the Individual having become over one hundred twenty days past due on his home mortgage. Ex. 1 at 6–7. The LSO’s allegations that the Individual demonstrated an inability or unwillingness to satisfy debts and a history of not meeting financial obligations justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a)–(c).

The LSO cited Guideline J (Criminal Conduct) 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. “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 thirteen instances in which the Individual was charged or cited for criminal conduct. Ex. 1 at 7–8. The LSO’s citation to the Individual having been charged or cited for criminal conduct justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

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

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 Financial and Medical Difficulties

The Individual filed for Chapter 7 bankruptcy in April 2015 and had numerous debts discharged. Ex. 5 at 32. From 2015 to 2021, the Individual had at least thirteen consumer debts assigned to collections. *Id.* at 34–36, 38–39. The Individual began experiencing medical difficulties in approximately late 2019 or early 2020. *See* Ex. C (providing a narrative of medical issues from the Individual). In early 2021, the Individual suffered a severe heart attack. *Id.*; Ex. 8 at 199; Ex. E at 3 (medical records reflecting Individual’s history of heart attack).

In November 2021, the Individual filed for Chapter 13 bankruptcy. Ex. 5 at 33; *see also* Ex. 6 at 70 (indicating that he filed for bankruptcy in November 2021 “to avoid foreclosure”). This bankruptcy proceeding was dismissed in January 2022 due to the Individual’s failure to make payments pursuant to a court-ordered payment schedule. Ex. 8 at 238; *see also* Ex. 6 at 70 (reflecting the Individual’s explanation in response to the LOI that the payments were not made because the bankruptcy trustee and the Individual’s attorney “neve[r] set up auto payment”). The Individual filed another petition for Chapter 13 bankruptcy in February 2022. Ex. 5 at 32. At this time, the Individual owed numerous debts to financial institutions, payday lenders, and telecommunications companies, among other creditors, but only a small fraction of his debts were medical debts. Ex. F at 2–3 (schedule of creditors included in the Chapter 13 bankruptcy); Tr. at 45 (testifying that he only owed \$4,500 in medical debt when he filed the second petition for Chapter 13 bankruptcy). This proceeding was dismissed in July 2022 at the request of the Individual. Ex. 6 at 69; Ex. F at 1; Tr. at 21, 43–44. The Individual sought the dismissal because he “was able to work with the mortgage company” and his home was “no longer in foreclosure,” and therefore he perceived that he had no “need to be on Chapter 13 anymore.” Tr. at 21; *see also id.* at 22, 42 (testifying that he did not make payments to any creditors, except for an auto loan, through the Chapter 13 bankruptcy and that his “intention[] for [the] Chapter 13[] was solely to save the foreclosure on [his] house”).

Eight consumer debts owed by the Individual were referred to collections in the period following the July 2022 dismissal of his Chapter 13 bankruptcy petition, including several medical debts, a payday loan debt, a debt to a telecommunications company, and several debts to a credit union. Ex. 5 at 33, 35–38. The Individual was employed by Employer B until March 2023 but made no payments towards his debts from the dismissal of the bankruptcy in July 2022 until the termination of his employment by Employer B in March 2023. Ex. 7 at 102; Tr. at 44. Other than a brief period of employment with a consulting company, the Individual was unemployed for most of the period of March 2023 until February 2024 when he began working for a DOE contractor. Ex. 7 at 99–102. The Individual’s medical issues persisted throughout this period, and he was hospitalized on

multiple occasions due to various ailments. Ex. C (reflecting a summary of medical events in this period prepared by the Individual); Ex. B (medical records from a September 2023 hospitalization describing the Individual's health issues and medical history).

As of the May 2024 credit report obtained during the background investigation of the Individual, the Individual owed a cumulative \$71,677 in delinquent consumer debts, of which \$59,480 was medical debt. Ex. 5 at 33–40. The May 2024 credit report additionally indicated that the Individual was over one hundred twenty days past due on his home mortgage payments and owed a past due balance of \$7,653. *Id.* at 41. During his July 2024 interview with the investigator, the Individual indicated that he intended to contact creditors to set up payment plans for his largest debts “before the end of [the] year.” Ex. 8 at 204. However, as of his December 2024 response to the LOI, the Individual had not resolved any of the delinquent debts. Ex. 6 at 71–81.

The Individual testified at the hearing that his past due mortgage payments had “been resolved.” Tr. at 29. However, the evidence submitted by the Individual does not fully support this claim. By letter dated July 7, 2025, the company servicing the mortgage on the Individual's primary residence issued him an offer to “bring [his] mortgage current and prevent further foreclosure actions.” Ex. G at 1. Pursuant to the offer, \$35,811.24 in past due payments would be added to the principal balance of the Individual's mortgage. *Id.* at 2. The letter indicated that the company servicing the Individual's mortgage “must receive [the] fully executed [offer], bearing original signatures, by 7/22/2025” and that “failure to comply with these requirements may affect [the Individual's] eligibility and delay the process.” *Id.* at 1 (emphasis in original). The version of the offer submitted by the Individual into evidence in this proceeding was signed by the Individual and notarized on August 19, 2025; one day prior to the hearing and almost one month after the deadline for the Individual to submit the accepted offer. *Id.* at 4.

At the hearing, the Individual claimed that he had “started contacting” his creditors concerning his consumer debts and was “making payment arrangements with them one by one.” Tr. at 24–25. However, the Individual provided no evidence of having done so and I do not credit his unsubstantiated claims. Moreover, the Individual admitted that the debts cited in the SSC were not resolved. *Id.* at 28.

B. Individual's Employment Record

The Individual was employed by Employer A from 2015 to January 2021. Ex. 7 at 103. The Individual was eventually terminated from his employment with Employer A due to excessive absenteeism from work due to health issues. Ex. 8 at 199. In February 2021, the Individual obtained employment with Employer B. Ex. 7 at 102. Within the first month of his employment with Employer B, the Individual suffered the abovementioned heart attack. Ex. 8 at 198. Employer B allowed the Individual to work from home due to various health conditions until early 2023, when he was directed to resume working at Employer B's place of business. *Id.* The Individual worked from Employer B's place of business for several months in early 2023 but eventually returned to working from home without advising his supervisor. *Id.* When the Individual's decision to work from home was discovered by Employer B, Employer B demanded that the Individual resume working at Employer B's place of business. *Id.* The Individual advised his supervisor that he was

unable to return to Employer B's place of business due to his health conditions, and Employer B fired the Individual in March 2023. *Id.*; Ex. 7 at 102.

C. Individual's History of Criminal Conduct

From 1994 to 2010, the Individual was charged or cited with the following offenses:

- DUI & Minor in Possession of Alcohol (MIP) – February 1994 (Guilty, license suspended for ninety days);
- MIP – May 1994 (Guilty, paid fine);
- DUI – July 1994 (Guilty, sentenced to ten days jail time and suspension of driver's license for six months, ordered to serve one-year term of probation);
- Malicious Injury to Property & MIP – 1995 (Disposition unknown);
- Theft – 1996 (Dismissed);
- DUI – June 2000 (Guilty, sentenced to three days jail time and suspension of driver's license for six months, ordered to attend treatment program and serve one-year term of probation);
- DUI – September 2000 (Disposition unknown);
- Firearm Offense – 2006 (Guilty, sentenced to forty-five days jail time with work release, ordered to serve eighteen-month term of probation);
- DUI – 2009 (Guilty, sentenced to unknown jail time and suspension of driver's license, ordered to serve two-year term of probation and attend alcohol-related classes);
- Driving with Suspended License – May 2010 (Guilty, sentenced to ten days jail time and suspension of driver's license for six months).
- DUI & Leaving the Scene of an Accident – June 2010 (Guilty, sentenced to two years incarceration and suspension of driver's license for five years, ordered to serve ten-year term of probation).

Ex. 8 at 228–35; *see also* Tr. at 17, 38 (testimony of the Individual at the hearing that he could not recall the details of the oldest alleged offenses and that for the alleged offense that occurred, for example, in “1996, I mean, . . . it's been a while to recall all the issues”). The two-year term of incarceration to which the Individual was sentenced for the 2010 DUI was suspended. Tr. at 49. However, the Individual was subject to the full ten-year term of probation which was modified from supervised to unsupervised probation after approximately two years. *Id.* at 50; *see also* Ex. 8 at 225 (reflecting the transfer of the Individual's probation to another jurisdiction in 2011 when the Individual moved from one state to another).

At some point following his separation from Employer A, the Individual sold electronic equipment belonging to Employer A to a pawn shop. Ex. 8 at 227–28. During the adjudication of his eligibility for access authorization, the Individual denied intentionally having stolen the electronic equipment; however, I do not credit this claim because of the Individual's inconsistent accounts of why he believed he was entitled to sell the electronic equipment. *Compare id.* at 200 (reflecting the Individual's statement to an investigator that he believed that the electronic equipment “was his to keep when he was fired”), *with* Ex. 6 at 83 (claiming in response to the LOI that he misplaced the electronic equipment and “thought [Employer A] took out the amount of the missing equipment from [his] last pay check”); Tr. at 33 (reiterating claim that he believed that his employer had

deducted the value of the electronic equipment from his final paycheck and therefore that it was his to dispose of as he saw fit when he located it some time later). A customer of the pawn shop who purchased the electronic equipment contacted Employer A for assistance in using the electronic equipment, and Employer A contacted law enforcement to report the electronic equipment as stolen by the Individual. Ex. 8 at 228. A warrant was issued for the Individual's arrest in connection with the theft of the electronic equipment. *Id.* In December 2022, during a traffic stop, a law enforcement officer arrested and charged the Individual with Theft and cited him for driving with an obscured license plate. *Id.* at 226. The Individual was arrested in April 2023 on a bench warrant after the Individual failed to appear in court in connection with his prosecution for the Theft and obscured license plate offenses. Ex. 7 at 122; Tr. at 34–35. The Individual ultimately paid fines and restitution to Employer A to resolve the offenses. Ex. 8 at 228; Tr. at 32–33, 35.

The Individual testified at the hearing that he had not consumed alcohol for at least four years. Tr. at 40. He indicated that he could not consume alcohol due to his health conditions, and accordingly was incapable of committing alcohol-related offenses in the future. *Id.* at 39–40.

D. The QNSP and Background Investigation

The Individual completed and signed the QNSP on May 23, 2024. Ex. 7 at 133. As part of completing the QNSP, the Individual certified that the information he provided in the QNSP was “true, complete, and correct to the best of [his] knowledge and belief and [was] made in good faith.” *Id.*

The Individual disclosed his February 2022 bankruptcy petition in the QNSP as required. *Id.* at 127. However, in response to a question asking whether he had “filed any additional petitions under any chapter of the bankruptcy code” in the prior seven years, the Individual checked a box marked “No” and did not disclose his November 2021 bankruptcy petition. *Id.* at 128. The Individual also checked a box marked “No” in response to a question asking if he had fallen into delinquency involving routine financial accounts in the prior seven years, including whether he “had bills or debts turned over to a collection agency” or “had been over 120 days delinquent on any debt” *Id.* at 128–29.

Regarding his employment history, the Individual disclosed his employment with both Employer A and Employer B. *Id.* at 102–03. In response to a question asking for the reason his employment with Employer A had ended, the Individual indicated “unsatisfactory performance . . . [due to] medical issues and personal issues that affected [his] job duties.” *Id.* at 104. With respect to Employer B, the Individual checked a box marked “Yes” in response to a question asking whether he had been, among other things, “fired” or “left by mutual agreement following notice of unsatisfactory performance.” *Id.* at 102–03. The Individual provided the following written explanation for his separation from Employer B: “[I] left by mutual agreement following notice of unsatisfactory performance” and “was told job ended.” *Id.* at 103.

Regarding his criminal conduct in the seven years prior to completing the QNSP, the Individual disclosed on the QNSP that he had been arrested on a bench warrant for “missing court” in April 2023 and had also been arrested on a bench warrant in December 2022. *Id.* at 121–22. The

Individual did not indicate that his December 2022 arrest was related to charges of Theft stemming from his pawning electronic equipment belonging to Employer A. *Id.* In response to a question asking whether he had “EVER been charged with an offense involving firearms” or “EVER been charged with an offense involving alcohol” the Individual disclosed his 2009 DUI but failed to disclose the other five occasions on which he was arrested and charged with DUI or his arrest and charge for the Firearm Offense. *Id.* at 123–25 (emphasis in original).

On July 30, 2024, the Individual met with an investigator for an interview as part of the background investigation into his eligibility for access authorization. Ex. 8 at 197. During the interview, the Individual disclosed that he had been fired from both Employer A and Employer B and had not left by mutual agreement as he indicated in the QNSP. *Id.* at 198. The Individual told the investigator that he did not disclose that he was fired from these positions due to “error.” *Id.*; see also Tr. at 15 (testifying at the hearing that he remembered more details related to the termination of his employment as he discussed the matter with the investigator than he did when he was filling out the QNSP).

Regarding his financial record, the Individual disclosed the November 2021 bankruptcy petition to the investigator before being confronted with the information and indicated that he omitted the petition from the QNSP in error. Ex. 8 at 203. The Individual denied any additional derogatory financial information he was required to report, at which point the investigator confronted the Individual with the numerous delinquent debts reflected on the May 2024 credit report obtained as part of the background investigation. *Id.* at 204–09. The Individual acknowledged most of the debts, indicated that he omitted them from the QNSP in error, and said that he intended to resolve the debts “before the end of this year [2024].” *Id.* The Individual indicated that he did not believe that he owed several of the debts, stating that they should have been included in his 2022 bankruptcy or that he had no knowledge of them, and that he had no plans to pay the debts in question. *Id.*

When asked by the investigator what led to his April 2023 arrest that he disclosed on the QNSP, the Individual indicated that he “believe[d] the [arrest] was from a theft charge” and went on to describe the alleged theft of electronic equipment from Employer A. *Id.* at 200. The Individual denied having been arrested or charged with any other criminal conduct he was required to report. *Id.* at 201. The investigator then confronted the Individual with several offenses he was required, but had failed, to report on the QNSP. *Id.* at 201–03. During the interview with the investigator, the Individual denied knowledge of the offenses, except for the 2006 Firearm Offense which he indicated that he omitted from the QNSP in error. *Id.*; Tr. at 16–17 (testifying that he had forgotten about the Firearm Offense when he was completing the QNSP and did not remember it until he was confronted by the investigator). However, at the hearing the Individual admitted that he did recall that he had been arrested for the alcohol-related offenses when he completed the QNSP but did not disclose them because he “couldn’t recall [the] exact dates” of his arrests. Tr. at 18.

The investigator conducted follow-up interviews with the Individual on September 11, 2024, and October 23, 2024, during which the investigator confronted him with additional law enforcement information obtained during the background investigation. Ex. 8 at 211–14. The Individual acknowledged the 1995 Malicious Injury to Property & MIP offenses and indicated that he failed to disclose them on the QNSP due to failing to remember them but denied knowledge of his June

2000 and September 2000 DUI offenses. *Id.*; *but see* Tr. at 18, 38 (testifying that he “vaguely remember[ed]” the incidents but did not disclose them on the QNSP because he could not recall the exact dates or circumstances of the arrests).

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 security concerns presented by the Individual’s absenteeism that led to his termination by Employer A and refusal to work in person that led to his termination from Employer B must be considered in light of the significant health problems he has experienced since 2020. *See* 10 C.F.R. § 710.7(c) (requiring consideration of, among other things, “the circumstances surrounding the conduct” in applying the Adjudicative Guidelines). The Individual worked for Employer A for approximately five years before his health problems began in earnest and has worked for the DOE contractor for approximately eighteen months. These periods of stable employment before and

after the onset of the Individual's health problems are suggestive that his employment difficulties from 2021 to 2023 were the product of the health issues rather than a longstanding pattern attributable to the Individual's character. Moreover, while the Individual is not entirely blameless, his conduct was not so flagrant as to raise serious security concerns under Guideline E. *Id.* (requiring consideration of the "nature, extent, and seriousness of the conduct"). Considering the nature of the Individual's rule violations, the limited time in which they occurred, and the fact that they were precipitated by serious health episodes, I find that the security concerns associated with the rule violations asserted by the LSO are resolved under the third mitigating condition. Adjudicative Guidelines at ¶ 17(c).

Turning to the allegations related to the Individual's failure to disclose derogatory information as required, the Individual volunteered the true circumstances of his separation from Employer B and the fact that he had filed a bankruptcy petition in November 2021 to the investigator, without having first been confronted by the facts, approximately two months after failing to provide this information on the QNSP. Considering the relatively minor nature of the discrepant information, *i.e.*, indicating that he had separated from Employer B by mutual agreement due to poor performance rather than being fired and failing to disclose the November 2021 bankruptcy petition while disclosing that he filed for bankruptcy protection in February 2022, I find that the Individual's correction of the inaccurate information to the investigator was sufficiently prompt to mitigate the security concerns under the first mitigating condition. *Id.* at ¶ 17(a); *see also* 10 C.F.R. § 710.7(c) (requiring consideration of, among other things, the "nature, extent, and seriousness of the conduct" in applying the Adjudicative Guidelines).

However, the Individual did not correct his failure to disclose his significant financial delinquencies or the criminal conduct he failed to disclose on the QNSP until after being confronted by the investigator.³ Accordingly, the Individual has not established the applicability of the first mitigating condition with respect to those omissions from the QNSP. Adjudicative Guidelines at ¶ 17(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not assert that he relied on the advice of counsel or another representative in completing the QNSP. *Id.* at ¶ 17(b).

I find the third mitigating condition inapplicable to the Individual's omissions on the QNSP because of the significant and voluminous nature of his omissions. If the LSO had relied on the Individual's assertions related to his financial situation, it might have assumed that his delinquent debts were resolved through the February 2022 bankruptcy proceeding and failed to recognize the significant, ongoing financial issues that presented security concerns under Guideline F. Moreover, the scale of the Individual's omissions related to his criminal conduct, which included offenses more recent than the 2009 DUI he disclosed, and his admission at the hearing that he omitted

³ Although the Individual was not directly "confronted" by the investigator with the Theft charge, I find that the Individual did not make good faith efforts to reveal this undisclosed charge because he only admitted to it after questioning by the investigator as to the circumstances that led to his arrest in 2023. However, even if the Individual had mitigated the security concerns presented by the omission of his Theft charge from the QNSP, it would not affect my determination that the Individual failed to resolve the security concerns under Guideline E because of the voluminous unresolved disclosures related to the Individual's financial delinquencies and criminal conduct.

offenses he knew he was required to disclose because he could not recall the precise dates or circumstances of the offenses leave me to conclude that he acted with the intention of concealing the full extent of his criminal record. This intentional deception is not minor and reflects negatively on the Individual's trustworthiness. Considering that the Individual's omissions persisted until he was confronted by the investigator, and that he has not identified any unusual circumstances that would justify his conduct, I find the third mitigating condition inapplicable to the omissions. *Id.* at ¶ 17(c).

The remaining mitigating conditions under Guideline E are irrelevant to the facts of this case. The Individual does not assert that he has participated in any counseling. *Id.* at ¶ 17(d). The LSO did not allege any conduct by the Individual that would place him at special risk of exploitation, manipulation, or duress, nor did the LSO rely on any sources of questionable reliability. *Id.* at ¶ 17(e)–(f). The LSO also did not allege that the Individual associated with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

Having concluded that none of the mitigating conditions resolve the Individual's omissions on the QNSP related to his financial delinquencies and criminal conduct, I find that the Individual has not fully resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline F

Conditions that could mitigate security concerns under Guideline F include:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income; and,

- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

As the Individual provided no evidence that he had resolved his delinquent debts or that his financial situation had stabilized, his financial difficulties may be ongoing, and I have no basis to conclude that they happened “long ago.” Even with respect to his mortgage, which the Individual claimed to have brought into a current status, the evidence submitted by the Individual indicates that he did not accept the offer from the company servicing his mortgage in a timely manner, and it is unclear whether the Individual is in fact current on the mortgage. While the Individual’s health problems have exacerbated his financial difficulties, his financial difficulties predate those health problems considering that he petitioned for Chapter 7 bankruptcy in 2015 and fell into delinquency on numerous debts in the years following his Chapter 7 bankruptcy but before his health issues arose. As the Individual’s financial difficulties are longstanding, predate his health issues, and are presumably ongoing, I find the first mitigating condition inapplicable. *Id.* at ¶ 20(a).

As indicated, the Individual’s health problems were unquestionably problems beyond his control that significantly contributed to his financial difficulties both with respect to the medical debts he incurred, which were the majority of the delinquent debts he owed as of the May 2024 credit report, and his periods of unemployment between the termination of his employment by Employer B and his hiring by the DOE contractor. However, as noted above, the Individual’s financial difficulties predated his documented health issues, and several of the delinquent debts on the Individual’s May 2024 credit report were referred to collections prior to 2020. Moreover, the Individual was still employed by Employer B, and continued to be for over one year, after he filed for Chapter 13 bankruptcy in February 2022. Despite being employed by Employer B and benefiting from the protection of the Chapter 13 bankruptcy proceeding, which together should have allowed him ample opportunity to make progress in resolving his debts, the Individual voluntarily exited the Chapter 13 bankruptcy in July 2022 once the threat of foreclosure of his home had subsided and made no demonstrated efforts to pay his numerous delinquent consumer debts. Even since obtaining steady employment with the DOE contractor, the Individual has made no progress in resolving the delinquent consumer debts. The Individual’s delay in signing the offer from the company servicing his mortgage to bring the debt current and avoid foreclosure until the eve of the hearing, almost one month after the deadline for the Individual to return the accepted offer, provides evidence that he continues not to act responsibly to manage his delinquent debts. Considering the foregoing, I cannot conclude that, to the extent that the Individual’s delinquent debts are attributable to his medical problems, he has acted responsibly under the circumstances. Accordingly, I find the second mitigating condition inapplicable. *Id.* at ¶ 20(b).

The Individual brought forth no evidence of having entered into agreements to resolve debts with any of his creditors, except for signing the offer from the company servicing his mortgage to bring his mortgage current. Even with respect to that debt, the Individual accepted the offer after the deadline, he provided no evidence of having returned the signed offer to the mortgage servicing company, and he cannot demonstrate adherence to the updated mortgage payment schedule contained in the offer because he only signed the agreement one day before the hearing. Accordingly, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 20(d).

The remaining mitigating conditions are irrelevant to the facts of this case. The Individual does not claim to have pursued financial counseling. *Id.* at ¶ 20(c). Nor has he brought forth any evidence of having a reasonable basis to dispute the legitimacy of his debts. *Id.* at ¶ 20(e). The LSO has also not alleged that the Individual displayed unexplained affluence or failed to comply with his tax obligations. *Id.* at ¶ 20(f)–(g).

Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

C. 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.

Adjudicative Guidelines at ¶ 32.

With the exception of the 1996 Theft charge, all of the Individual's criminal offenses from 2010 and earlier are mitigated pursuant to the first mitigating condition. Other than the Theft charge, all of the Individual's offenses from 2010 or earlier directly involved alcohol, except for the 2010 Driving with Suspended License offense which was indirectly related to alcohol because it was preceded by the suspension of the Individual's driver's license due to the 2009 DUI. The Individual has not been arrested or charged with an alcohol-related offense in over fifteen years. Moreover, in light of the evidence he has submitted concerning the deterioration of his health, I accept his representation that he no longer consumes alcohol. Considering the passage of over fifteen years since the Individual's most recent alcohol-related offense and the fact that he no longer consumes alcohol, I find it highly improbable that he will commit alcohol-related offenses in the future. Thus, I find the first mitigating condition applicable to the Individual's 2010 and earlier criminal conduct, with the exception of the 1996 Theft offense. *Id.* at ¶ 32(a).

The Individual's 1996 Theft offense is not mitigated under the first mitigating condition because he pleaded guilty to another Theft offense relatively recently in connection with the theft of

electronic equipment from Employer A. Stealing from one's employer and selling the stolen goods for personal gain presents extremely serious security concerns; if the Individual was willing to steal electronic equipment from Employer A to sell, access to more valuable information and items with DOE access authorization could foreseeably lead the Individual to repeat this conduct and cause grave damage to national security. *See* 10 C.F.R. § 710.7(c) (requiring consideration of the "nature, extent, and seriousness of the conduct" in applying the Adjudicative Guidelines). Considering the immediate and serious nature of the threat presented by a cleared individual's theft of goods or information, the fact that the Individual has been charged with Theft on multiple occasions, and that his most recent Theft offense was relatively recent, I find the first mitigating condition inapplicable to the Individual's Theft offenses. Adjudicative Guidelines at ¶ 32(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not allege that he was pressured or coerced into committing any unlawful conduct. *Id.* at ¶ 32(b).

Although the Individual denied that he intentionally stole the electronic equipment from Employer A, and denied recollection of the details of the 1996 Theft offense which was dismissed, I find that the concerns raised by these offenses are not mitigated under the third mitigating condition. The criminal records obtained through the background investigation and the fact that the Individual pleaded guilty to the 2022 Theft charge, combined with his unconvincing explanations for why he believed that he was entitled to sell Employer A's electronic equipment, lead me to conclude that there is some reliable evidence that he committed the offense. Although the 1996 Theft charge was dismissed, the reasons for the dismissal are unclear and the mere fact that the Individual was not convicted does not establish that he did not commit the offense. Considering that the Individual brought forward no information concerning the 1996 offense, and that he has pleaded guilty to a more recent Theft offense, I do not find that he has brought forward sufficient evidence for me to conclude that the third mitigating condition resolves that offense either. *Id.* at ¶ 32(c).

The Individual complied with a court's order and paid restitution to Employer A related to the 2022 Theft charge. However, the Individual has not brought forward any other evidence of rehabilitation and, considering the abovementioned serious concerns presented by a cleared individual having a history of stealing and selling an employer's property, I find that the evidence of rehabilitation provided by the Individual's payment of restitution is insufficient to overcome the security concerns presented by his conduct. *Id.* at ¶ 32(d).

For the aforementioned reasons, I find that the Individual has only partially established the applicability of the mitigating conditions and has not fully resolved the security concerns presented by the LSO's allegations under Guideline J.

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, F, and J 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 not brought forth sufficient evidence to fully resolve the security concerns asserted by the LSO. 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