

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: June 4, 2025)
)
_____)

Case No.: PSH-25-0141

Issued: October 3, 2025

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material or Eligibility to Hold a Sensitive Position.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. Derogatory information was discovered that cast doubt on the Individual’s judgment, trustworthiness, and reliability. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-25-0141 (hereinafter cited as “Tr.”). The LSO submitted eighteen exhibits, marked as Exhibits 1 through 18 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through E.

¹ Under the regulations, “[a]ccess authorization’ means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines D and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Under Guideline D, a security concern may be raised by

[s]exual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

Adjudicative Guidelines at ¶ 12.

Conditions that could raise a Guideline D security concern include:

- (a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) A pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
- (c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) Sexual behavior of a public nature or that reflects lack of discretion or judgment.

Id. at ¶ 13.

Guideline J states that “[c]riminal 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.” *Id.* at ¶ 30.

Conditions that could raise a Guideline J security concern include:

- (a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) 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;
- (c) Individual is currently on parole or probation;
- (d) Violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (e) Discharge or dismissal from the Armed Forces for reasons less than "Honorable."

Id. at ¶ 31.

The LSO alleges that in September 2023, the Individual was arrested and charged with Engaging in Lewd Conduct, Peeking, and Invading Privacy. Ex. 1 at 6.² The LSO alleges that the Individual was discovered peeping through his neighbor's window while touching his genitals. *Id.* This alleged sexual behavior is public in nature and reflects poor judgment and discretion. It is also criminal in nature. Accordingly, security concerns are properly raised under Guideline D. Adjudicative Guidelines at ¶ 13(a), (d). Because there is an allegation of criminal conduct, security concerns are also properly raised under Guideline J. *Id.* at ¶ 31(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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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

² DOE Exhibits will be referenced using the Bates stamp page number.

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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In September 2023, the Individual was arrested after a neighbor accused him of looking through a neighbor's window naked while touching himself inappropriately. Ex. 3 at 76–77. A source spoken to by security clearance investigators stated that he had been told by a neighbor that the neighbor had caught the Individual “coming outside without any clothes on and peeking into the window of [another] neighbor.” Ex. 18 at 50.

In his response to a November 2023 Letter of Interrogatory (LOI) from DOE, the Individual denied the allegations for which he was arrested. Ex. 7 at 90. He asserted that some of his neighbors had a grudge against him and that one of them had leveled false accusations against him. *Id.* He asserted that he slept naked and had woken up around 2:00 a.m. and opened his front door to get some air to cool down. *Id.* He asserted that the door was open for about fifteen seconds. *Id.* At the hearing, the Individual added that he stepped out past his doorstep for fifteen to thirty seconds. Tr. at 18, 46. The Individual wrote in the LOI that he repeated his actions the following night. Ex. 7 at 90. He asserted that he “had no intention of exposing [him]self to someone or expectation that anyone would even have been around at that time of night.” *Id.* The Individual was arrested and released on \$100,000.00 bail. *Id.* at 91. The Individual was ordered to stay at least ten yards away from the neighbor into whose window he allegedly looked. *Id.*; Ex. 10 at 120–21; Ex. 16 at 123. The Individual pleaded Not Guilty to all charges and was allowed to enter a pre-trial diversion program in March 2025. Ex. 15 at 119; Ex. 2 at 70–71. The pre-trial diversion program required the Individual to stay 100 yards away from his now-former address where the alleged underlying incidents took place, to complete twenty hours of community service, and to complete six individual counseling sessions. Ex. 2 at 70–71. The Individual successfully completed the pre-trial diversion program in September 2025, and the criminal charges were dismissed. Ex. E.

The Individual submitted into evidence a letter from his therapist confirming that he had completed six sessions of counseling with her. Ex. B. The letter stated that the Individual had worked on “significant aspects of [his] emotional well-being, personal growth, and coping strategies.” *Id.* The Individual also submitted into evidence the sign-in sheets for his community service. Ex. C; Ex. D. The Individual testified that he was still volunteering, even though his court ordered community service was complete. Tr. at 28.

At the hearing, the Individual testified that the front door at his former apartment was recessed and he would not have been able to see his next-door neighbor's window from the shared doorway recess leading to his and his neighbor's apartments. Tr. at 19. He testified that his doorway could be observed by his neighbors across the walkway (from the window), his next-door neighbors (from their front door), and people in the parking lot. *Id.* at 20, 22. He testified that he believed his next-door neighbor called the police at the request of his neighbor across the walkway. *Id.* at 25.

The Individual testified that he had never gone outside naked at any other time in his life. *Id.* at 69–70. However, the Individual also testified that he had no evidence to corroborate his testimony that he did not peep or engage in lewd conduct on the nights in question because there was no physical evidence either way. *Id.* at 75.

The Individual testified that in therapy he worked on mindfulness, how to be a happier person, and his relationships with family. Tr. at 25. He testified that they did not discuss the charges against him because he was falsely accused. *Id.* at 26. The Individual testified that he did not discuss why he went outside naked because the therapy was court ordered and the court was concerned with behaviors like invasion of privacy and peeping, not simply being naked outside.³ *Id.* at 73. He believed at the time of the incidents leading to the charges that no one would see him and that stepping outside naked was a “minor, harmless thing.” *Id.* at 26. He testified that he did not, at the time, believe his behavior was “okay. [He] just thought it would be a nonevent . . . because it was so late.” *Id.* at 73. He testified that he now realized that he might offend others by going outside naked and that he did not want to “have that same issue as before” and would not repeat the behavior. *Id.* at 26–27. The Individual characterized the court’s therapy requirement as an afterthought, stating that “[t]he counseling was mainly just a requirement by the judge . . . because she wanted to feel certain.” *Id.* at 83. The Individual testified that his therapist would not have any testimony relevant to the matters at issue. *Id.*

In his October 2023 report to DOE stating that he had been arrested, the Individual “stated that the charges resulted from a neighborhood grudge and his lawyer expect[ed] them to be dismissed/expunged.” Ex. 6 at 88. The Individual testified at the hearing that he did not believe his neighbors’ grudge against him existed prior to his arrest. Tr. at 38–41. He testified that he believed they developed a grudge against him after his arrest and that is what he meant when he reported the suspected grudge to investigators. *Id.* He did not explain why his neighbors’ post-arrest behavior and disposition toward him was relevant to his arrest such that he included it in his report to DOE.

The Individual testified that his managers and human resources team were aware that his security clearance had been suspended but were not aware of the details of his arrest. Tr. at 31–32, 35–37, 57. He told them that he had been arrested for a “dispute between neighbors.” *Id.* at 36–37. The Individual submitted into evidence three reference letters from colleagues in support of his character. Ex. A at 1–5. He testified that when they wrote the letters, his colleagues did not know that he had been arrested. Tr. at 57. He further testified that knowing about the peeping and lewdness charges would not change their opinions of him, but nonetheless he did not disclose the charges to them because he wanted to keep the relationships professional and he did not want to “introduce complications into the workplace.” *Id.* at 57, 80. However, when asked what complications disclosure may have introduced, the Individual admitted that he thought his colleagues may have believed the allegations and decided not to associate with him. *Id.* at 80.

³ I take notice that the Individual testified to discussing many topics with his therapist that were not related to the charges against him and that the Individual testified to intentionally bypassing in therapy matters related to his charges. Tr. at 25–26. It is unclear why lack of relevance to the charges was a reason not to discuss his actual behavior on the nights of the incidents in question.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

A. Guideline J

Conditions that could mitigate Guideline J security concerns 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. Mitigating condition (b) is not relevant to the issues at hand because the Individual does not claim he was coerced. For the reasons stated below, mitigating conditions (a), (c), and (d) do not apply.

If the Individual did indeed engage in peeping and lewd conduct, his refusal to engage in any treatment measures precludes mitigation under the current circumstances. While the Individual has taken some measures to demonstrate that he is rehabilitated, doubt remains regarding his judgment, trustworthiness, and reliability. He has participated in community service and maintained his employment, but he has not addressed the thought processes that led him to go outside naked in

the first place. Thus, his rehabilitative actions do not fully resolve the Individual's criminal conduct in this case. Moreover, the Individual's behavior was recent—he only finished his diversion program days before the hearing—and being warm in one's home is not an unusual circumstance. Accordingly, I find that mitigating conditions (a) and (d) are not applicable.

The Individual maintains that he did not engage in peeping or lewd conduct and that he simply went outside naked at 2:00 a.m.. I did not find the Individual's testimony wholly credible. He gave shifting explanations as to whether his neighbors called the police due to a grudge against him, as to why he did not discuss his concerning behavior with his therapist, and as to why he did not disclose the details of his situation to the colleagues who provided reference letters. His rationales changed over time—in certain cases, over the course of his hearing testimony—in inconsistent ways. I am not confident that he did not engage in the concerning behavior of which he was accused and there is no documentary or physical evidence proving the truth of the matter. When any doubt remains, I must find in favor of the national security, and I do so now. Accordingly, I find that mitigating condition (c) is not applicable.

For the foregoing reasons, I find that the Individual failed to mitigate the security concerns under Guideline J. Moreover, as explained in the following paragraphs, even if the Individual's explanation of events is true, he has still failed to mitigate the concerns under Guideline D.

B. Guideline D

Conditions that could mitigate Guideline D security concerns include:

- (a) The behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) The sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (c) The behavior no longer serves as a basis for coercion, exploitation, or duress;
- (d) The sexual behavior is strictly private, consensual, and discreet; and
- (e) The individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Adjudicative Guidelines at ¶ 14. None of the mitigating conditions apply.

Regarding conditions (a) and (e), the Individual's concerning behavior occurred in adulthood and he did not participate in any treatment related to the behavior, making both conditions inapplicable.

Regarding condition (d), the sexual behavior was not private, consensual, or discreet because peeping and the lewd conduct alleged are, by definition, non-consensual and neither private nor discreet; this is the basis for their criminality. Even assuming the truth of the Individual's explanation, the public nature of walking into the outdoor common area of an apartment complex, visible also from the street, excludes privacy or discretion, and there is no indication that anyone consented to seeing the Individual's naked body. Accordingly, mitigating condition (d) does not apply.

Regarding conditions (b) and (c), there is not adequate evidence that the Individual's judgment has improved such that he will not engage in the same or similar behavior again, which, in turn, indicates an ongoing risk of coercion, exploitation, or duress in addition to the risk posed by his concern that his coworkers would not associate with him if they knew why he was arrested. The Individual refused to engage with his therapist about why he chose to go outside in a public area while naked. He maintains to the present time that his primary mistake was assuming he would not be seen. He did not address with his therapist or this tribunal the thought processes leading up to his decision to expose himself to his neighbors and passersby. Accordingly, I cannot assess whether he might make similar choices in the future. In fact, I am not certain the Individual is capable of guaranteeing his future behavior because he has declined to participate in any meaningful introspection as to why he is in his current situation. Therefore, I cannot be confident that the behavior—whether criminal peeping and lewdness or simply going into public areas naked—is unlikely to recur or that the risk of coercion, exploitation, or duress has passed. Moreover, the behavior, even under the circumstances described by the Individual, continues to cast doubt on the Individual's judgment, trustworthiness, and reliability. Neither mitigating condition (b) nor (c) applies.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline D security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guidelines D and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual.

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals