

herein. *See id.*; Ex. 6 at 40. The Individual's DC and RO authority was suspended in March 2024 due to what the DOE Contractor characterized as "mishandling classified information." Ex. 11 at 63.

In August 2024, the local security office (LSO) received a Personnel Security Information Report (First PSIR) indicating that the Individual "was one of [] two individuals initially found responsible for a large spillage" of classified information. Ex. 7 at 43–44. In response to a September 2024 letter of interrogatory (LOI) from the LSO concerning the First PSIR, the Individual disclosed a second incident wherein he discussed classified information with two colleagues while, unbeknownst to him, an unsecure video teleconference meeting line from a meeting he had conducted remained open and at least one attendee of the meeting was still on the line. Ex. 8 at 50.

In January 2025, the LSO received a PSIR (Second PSIR) indicating that the Individual had created a classified document and sent it over a secure network despite his DC authority having been suspended. Ex. 6 at 40. The Second PSIR further indicated that, during an inquiry into the matter, the Individual "alluded he had sent the document as a draft" when in fact the document "did not have [d]raft markings nor was it properly marked." *Id.* A report of an inquiry by the DOE Contractor into the incident indicated that the Individual, despite knowing that his DC authority was suspended, stated that he "did not know that he couldn't [apply classification markings] anymore." Ex. 11 at 66.

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 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E and K of the Adjudicative Guidelines. *Id.* at 5.

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 thirteen exhibits (Ex. 1–13) and the Individual submitted twenty-eight exhibits (Ex. A–EE).⁵ The Individual testified on his own behalf and offered the testimony of five witnesses. Tr. at 3–4, 61, 72, 92, 124, 141. 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. "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

Government information concerning nuclear facilities, materials, weapons, and components whose dissemination is controlled under section 148 of the Atomic Energy Act and this part." *Id.*

⁵ The Individual marked his exhibits sequentially by letter, but omitted Ex. I, Ex. O, and Ex. Z.

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: (1) created a classified document, applied DC and RO markings to the document, and sent it as a final copy despite his DC and RO authority having been suspended following a prior failure to follow classification procedures; and, (2) claimed to the DOE Contractor during its inquiry into the aforementioned incident that he was unaware he no longer had authority to determine and apply classification markings. Ex. 1 at 5. The LSO’s allegation that the Individual deliberately provided false or misleading information to his employer justifies its invocation of Guideline E.⁶ Adjudicative Guidelines at ¶ 16(b).

The LSO cited Guideline K (Handling Protected Information) of the Adjudicative Guidelines as the other basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5. “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 to the DOE contractor’s determination that the Individual mishandled classified information and failed to follow applicable procedures in March 2024, the Individual’s discussion of classified information over an unsecure line in August 2024, and the Individual’s creation and transmission of a classified document marked as a final copy in December 2024 despite having had his DC and RO authority suspended. Ex. 1 at 5. As explained in the Analysis section, I find that the LSO’s allegations related to the March 2024 security incident do not present security concerns under Guideline K. *Infra* § V(B). The LSO’s other two allegations, that the Individual failed to comply with rules for the protection of classified or sensitive information and engaged in negligent or lax security practices that persisted despite counseling by management, justify its invocation of Guideline K. Adjudicative Guidelines at ¶ 34(g)–(h).

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

⁶ The LSO’s allegation concerning the Individual’s failure to follow classification procedures appears to allege that the Individual’s behavior presents a concern under the fourth subparagraph of paragraph 16 of Guideline E; specifically, that he engaged in “a pattern of dishonesty or rule violations.” Adjudicative Guidelines at ¶ 16(d)(3). However, this security concern may only be invoked if it is based on “credible adverse information that is not explicitly covered under any other guideline” *Id.* at ¶ 16(d). As the Individual’s alleged failure to comply with rules for the protection of classified or sensitive information was invoked by the LSO under Guideline K, it cannot also be invoked under ¶ 16(d)(3). Accordingly, I find that the Individual’s alleged failure to comply with rules for the protection of classified or sensitive information does not present a security concern under Guideline E and I will address it solely under Guideline K.

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 Professional Experience and History of Compliance with Security Rules

The Individual has possessed access authorization for over thirty years in connection with his work for DOE contractors. Ex. 11 at 67; Ex. 13 at 108–10; Tr. at 19. The Individual has a long history of complying with security-related rules in the workplace. Ex. U (letter from a security professional indicating that, in his experience, the Individual always adhered to procedures, guidelines, and security policies related to handling classified documents); Ex. AA (letter from a colleague of the Individual stating that he observed the Individual having “consistently complied with . . . policies governing classified and sensitive information across all phases of the information lifecycle”); Ex. BB (letter from a former manager of the Individual who “never witnessed any instance in which [the Individual] mishandled classified material or failed to follow proper classification or handling requirements”); Ex. CC (letter from a senior leader stating that the Individual was a consummate professional and that she “did not observe any instance in which he mishandled project documentation or failed to follow proper classification practices”); Ex. DD (letter from a former management official of DOE with oversight responsibility for some of the Individual’s work stating that the Individual “consistently followed all required procedures, regulations, and policies pertaining to the handling, protection, and management of sensitive information, and at no time do I recall [him] inappropriately generating, handling, transmitting or communicating sensitive or classified materials”). Prior to 2024, no security incidents involving the Individual were reported to DOE. Tr. at 8 (reflecting the stipulation of the DOE Counsel that no security incidents involving the Individual were reported to DOE prior to those referenced in the SSC).

B. March 2024 Incident and Suspension of the Individual’s DC Authority

An April 2025 incident report prepared by security professionals employed by the DOE Contractor related to the December 2024 incident stated that the Individual’s “DC/RO authority was suspended due to a prior security incident in March 2024 involving mishandling classified information . . .” Ex. 11 at 63. The incident report further indicated that the Individual’s “DC/RO

authority was suspended because of the improper use or failure to follow the classification procedures.” *Id.* at 66; *but see* Tr. at 155, 161–62 (Director of the DOE site at which the Individual worked (Director) testifying that the investigation of the March 2024 incident concluded in October 2025, after the April 2025 incident report, and determined that the Individual had not personally mishandled classified information but “[a]s a senior employee, as the DC/RO, you know, he was responsible for the reason why [classification] guidance wasn’t being reviewed” by other personnel who potentially stored classified information in an unsecure location). The record contains no documentation of the specifics of the Individual’s alleged mishandling of classified information. The Individual was never determined by the DOE Contractor to have committed a violation or infraction in connection with the incident. Tr. at 142 (testimony of the Director confirming the same).

According to the Individual, a spillage of classified information was determined to have occurred in March 2024, but he was not provided with any details concerning the nature of the incident. *Id.* at 20–21; *see also id.* at 79 (testimony from the Individual’s then supervisor that he believed that potentially classified information was stored on an unclassified system). According to the Individual, he was interviewed as part of an inquiry related to the spillage in April 2024 but was only asked generic questions that did not shed light on the nature of the spillage event. *Id.* at 21–22. According to the Individual, he later learned that none of the projects on which he worked were involved in the spillage and he did not have access to the files related to the spillage event. *Id.* at 23, 25. Both the Individual’s supervisor at the time of the March 2024 incident and the Director testified that they believed that the Individual was not responsible for the March 2024 incident.⁷ *Id.* at 80, 141.

The Individual’s DC/RO authority was suspended in April 2024. Ex. 11 at 66; Ex. 6 at 40. According to the Individual, he requested the suspension after being directed to participate in a triage event related to the spillage event wherein he was asked to offer an opinion on classification of information in an environment which he felt compromised his ability to make appropriate classification determinations. Tr. at 29–30; *but see id.* at 80–83, 86–88 (Individual’s supervisor at the time of the March 2024 incident corroborating the Individual’s account but indicating that the supervisor’s DC/RO authority was also suspended and that he believed it would have been standard procedure for the Individual’s DC/RO authority to have been suspended during the investigation regardless of his request); *see also* Ex. B at 2 (July 2025 e-mail from the DOE contractor’s information security manager stating that she “did not plan to suspend [the Individual’s DC/RO] authorities” and thus implying that the Individual’s request may have contributed to the suspension).

C. August 2024 Incident

⁷ The Director testified that the Individual had no responsibilities for classification on the projects related to the March 2024 incident and that “to blame him for not doing proper classification on projects he was not assigned to, to me was just kind of like, come on, what are we doing here?” Tr. at 155–56. The Director further opined that policies restricting the distribution of guidance documents likely contributed to the potential failure to properly store classified information by employees other than the Individual and therefore she refused to sign a root cause analysis which attributed fault to the Individual for noncompliance with the guidance by other employees. *Id.* at 155–57.

In August 2024, the Individual attended an unclassified meeting from a conference room in a limited area. Ex. 8 at 50; Ex. V. Some attendees participated via video teleconference while others were physically present with the Individual in the conference room. Ex. 8 at 50. When the meeting concluded, the Individual clicked a button on the teleconference platform to end the meeting and logged off the computer he and the other attendees in the conference room used to participate in the meeting. *Id.*; Ex. V. The Individual and the other physically present individuals then discussed various topics, including classified information. Ex. 8 at 50; Ex. V. At some point after the discussion of classified information, a virtual attendee of the meeting who was still connected via audio announced his presence over the speakers in the conference room and indicated that he was disconnecting from the meeting. Ex. 8 at 50; Ex. V.

The most senior attendee (Program Manager) who was physically present during the discussion of classified information immediately disclosed the spillage. Ex. 8 at 50; Ex. V. The DOE Contractor conducted an inquiry into the incident wherein it “determined [that] the equipment used for the call had not been properly trained on by the employees” and the Individual “was not found at fault . . . since the discussion happened after the meeting had officially concluded.” Ex. 6 at 40; *see also* Tr. at 163 (testimony of the Director that users of the conferencing hardware were not made aware that connections could persist even after terminating the call using the teleconference software and that guidance was issued following the August 2024 incident to address this issue).

D. December 2024 Incident and Investigation

The Individual’s work group was responsible for transmitting a final report (Report) to a DOE national laboratory in December 2024. Ex. 11 at 66; Ex. X. At some point in December 2024, the Individual contacted two DOE Contractor employees, the Program Manager and a subject matter expert (SME), requesting DC review of the Report. Ex. 11 at 66. Both employees were traveling and unable to review the Report. Ex. L. The Program Manager advised the Individual that he should have another employee (Employee A), who the Program Manager believed “had the correct cert[ification]s,” conduct the DC review “to meet the project deadline.” *Id.* The Individual approached Employee A and requested that he conduct the DC review. Ex. 11 at 66. Employee A requested that the Individual provide him with the classification guide for the information, but the Individual could not obtain it, and Employee A did not complete the DC review. *Id.*

On December 13, 2024, the Individual copied text with classification markings from a PowerPoint presentation into a Word document version of the Report, removed “DRAFT” markings, and transmitted it via a secure network to an employee of the national laboratory in an email in which the Individual indicated that the Report was a “polished DRAFT.” *Id.* at 67; Ex. P (email from the Individual transmitting the Report over the secure network indicating that the Individual had classified the Report and that it was a draft); Tr. at 46; *see also* Tr. at 14 (Individual testifying that the information in the PowerPoint presentation had been “reviewed by multiple DC/ROs”). On January 6, 2025, the SME spoke to the Individual who told the SME that he had transmitted the Report to the national laboratory and that Employee A had not completed DC review due to difficulties in obtaining the classification guidance. Ex. 11 at 65. The SME advised the Individual that Employee A was not authorized to conduct DC review of the information in the Report. *Id.* The SME subsequently reviewed the Report transmitted to the national laboratory and noted it was not marked “DRAFT,” it was “fully portion marked,” and the “Classified by” line was blank. *Id.*

at 65–66. As a consequence of the Individual having omitted draft markings from the Report, the classification markings he copied from the PowerPoint file constituted final markings which he was not authorized to make due to the suspension of his DC/RO authority. Tr. at 50–51. The SME subsequently reported this information to security personnel of the DOE Contractor. Ex. 11 at 66.

The DOE Contractor investigated the incident, including interviewing the Individual on January 10, 2025. *Id.* During the interview, the Individual stated he was unaware that “only DC/ROs are authorized to apply classification markings” or that he was not allowed to do so after the suspension of his DC/RO authority in April 2024. *Id.* The Individual testified that he believed he was entitled to apply classification markings pursuant to the DOE Contractor’s policies so long as he did so at the direction of a DC/RO. Tr. at 14–16, 48–49; *see also* Ex. F (indicating in an excerpt of a policy that a DC/RO could “[i]nstruct the [e]mployee to . . . [p]lace the classification authority block on the front page” of a document).

On April 17, 2025, the DOE Contractor concluded its inquiry, determining that the Individual had committed a security infraction⁸ when he “portion-marked a classified document with DC/RO markings, removed DRAFT markings, and transmitted [the Report] via a secure network” despite his DC/RO authority having been suspended and without having the Report “reviewed by a DC/RO prior to sending . . .” Ex. 11 at 78; Ex. J; *see also* Tr. at 174 (Director testifying that the infraction was “not significant to me”). The report of the inquiry further noted that the Individual’s conduct constituted a violation because he “did not follow appropriate procedures for marking draft documents OR obtain[] a DC/RO review before transmitting the document.” Ex. 11 at 68. The report noted that “[t]here was no risk of compromise” of classified information because the Individual sent the Report “via a secure network to a recipient within the firewall.” *Id.* at 69.

In his hearing testimony, the Individual admitted he should not have omitted draft markings from the Report, which he testified that he removed from the Report in anticipation of Employee A’s DC/RO review and forgot to replace when Employee A did not finish reviewing the Report. Tr. at 47, 52. The Individual attributed his inadvertent omission of draft markings to his haste to transmit the Report before the deadline. *Id.* at 47–48. The Individual testified he now marks “draft” on “every single document” he works with until a classification or controlled unclassified information determination is made. *Id.* at 54. The Individual’s supervisor at the time of the December 2024 incident testified that the Report should have contained draft markings because it had not received DC/RO review and that a lack of training by the DOE Contractor on use of the secure network likely contributed to the Individual’s infraction. *Id.* at 108–09 (testifying that “[t]here was nothing in the training that talked about attachments and how you -- and drafts and things like that”).

V. ANALYSIS

A. Guideline K

Conditions that could mitigate security concerns under Guideline K include:

⁸ Documentation sent to the LSO indicated that the Individual was found to have committed a “violation,” which the DOE Contractor’s policies characterized as a willful or grossly negligent act. Ex. 11 at 76, 78. The DOE Contractor subsequently reduced the severity of its finding to an “infraction” which includes negligent acts which “do[] not constitute a violation or result in the actual loss or compromise of a security interest.” *Id.* at 76; Ex. J at 1.

- (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.

Before applying the mitigating conditions under Guideline K, I first address the March 2024 security incident which I conclude does not present security concerns. There is no information in the record identifying any rule or regulation the Individual violated or negligent security practices in which he engaged in connection with the March 2024 security incident. I credit the Director's testimony that the DOE Contractor's inquiry into the March 2024 security incident concluded that the Individual was partially responsible because, as a senior employee, he had responsibilities for ensuring that other employees reviewed applicable guidance. While this casts doubt on the Individual's effectiveness in his role as an employee of the DOE Contractor, it does not raise a security concern under Guideline K because the conditions that can raise a security concern under Guideline K pertain to specific actions by individuals, not broader considerations of institutional compliance. As there is insufficient evidence to establish that the Individual personally violated any rule or regulation or behaved negligently in connection with the March 2024 security incident, I find that the incident does not present a security concern.

The Individual's accidental discussion of classified information over an unsecure line in August 2024 does present a security concern under Guideline K. However, based on the Individual's testimony, witness accounts, and the DOE Contractor's inquiry into the incident, it is apparent that the spillage occurred due to improper training on the use of equipment in the conference room in which the spillage occurred. Accordingly, I find the security concerns presented by the incident mitigated under the third mitigating condition. *Id.* at ¶ 35(c).

Turning to the December 2024 incident, the Individual attributed his failure to comply with applicable rules to haste and a desire to meet a deadline. Considering the Individual's age, maturity, and lengthy history of holding a security clearance, he should have known better than to act as he did under the circumstances. *See* 10 C.F.R. § 710.7(c) (requiring consideration of "the circumstances surrounding the conduct" and "the age and maturity of the individual at the time of the conduct" in applying the Adjudicative Guidelines). However, the infraction was minor and, considering my findings with respect to the March 2024 and August 2024 incidents and the fact that the Individual had never been involved in any prior security incidents, an isolated event. *See id.* (requiring consideration of the "nature, extent, and seriousness of the conduct" and the

“frequency and recency of the conduct”). The Individual sent the Report over a secure network and identified it as a draft in the transmitting email. Based on the record, it appears that the Individual would not have committed an infraction at all if he had not inadvertently failed to replace draft markings he removed from the Report in anticipation of DC/RO review by Employee A. Moreover, there is no indication of compromise. While the December 2024 incident occurred relatively quickly after the August 2024 security incident, the Individual was not found at fault for the August 2024 incident and there is no record of the Individual having committed any other security infractions over his lengthy career. In light of the considerations under 10 C.F.R. § 710.7(c), which weigh in favor of mitigation, I find that the December 2024 infraction was an event that occurred so infrequently that it does not cast doubt on the Individual’s reliability, trustworthiness, or judgment, and that the first mitigating condition applies. Adjudicative Guidelines at ¶ 35(a).

For the aforementioned reasons, I find that the Individual has resolved all of the security concerns asserted by the LSO under Guideline K.

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's explanation for his statement during the inquiry into the December 2024 incident – that he was unaware that he could not portion-mark documents based on a DOE Contractor policy allowing an employee to place a classification block on the first page of a document at a DC/RO's direction – is not persuasive and reflects an unreasonable interpretation of that policy. However, the LSO did not allege any other instances of the Individual providing false or misleading information and the conduct to which the statement pertained was of minor significance, as explained in the Guideline K analysis. Considering the isolated nature of the Individual's unreasonable statement and the minor offense it concerned, I am convinced the behavior was sufficiently minor and infrequent that it is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment. Accordingly, I find the third mitigating condition under Guideline E applicable. *Id.* at ¶ 17(c).

For the aforementioned reasons, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline E.

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 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. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals