



the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual testified on his own behalf. The DOE counsel did not present any witnesses. The LSO submitted 10 exhibits into the record; the individual tendered five exhibits. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.<sup>3</sup>

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (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 his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> Criterion L relates to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . ." 10 C.F.R. § 710.8(l).

<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov](http://www.energy.gov).

## **B. Basis for Administrative Judge's Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously mentioned, the Notification Letter cites one potentially disqualifying criterion as a basis for denying the individual's security clearance, Criterion L. To support its reliance on Criterion L, the LSO alleges that the individual has a pattern of criminal conduct, citing over 10 charges and arrests. The individual's vulnerability to blackmail, exploitation, and duress calls into question the individual's judgment, reliability, trustworthiness and his ability to protect classified information. See Guideline J of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Adjudicative Guidelines*).

## **IV. Findings of Fact**

The individual has an extensive history of criminal conduct. During a March 2015 PSI, the individual admitted that he used and purchased marijuana once a week for three months in 1990 and then once every three years until 2001. He purchased and used cocaine or crack cocaine once a week between 1994 and 1996 or 1997 and once a week for about a two-month period in 2002 or 2003. Between 1994 and 1996, the individual was arrested and charged with Domestic Violence five to ten times after he got into arguments with his mother. In approximately 1995, the individual was arrested and charged with Grand Larceny after he stole his mother's stereo and sold it to buy drugs. He was subsequently sentenced to a rehabilitation facility. However, on April 2, 1997, he was charged with Battery with a Deadly Weapon (Felony) and Burglary with Use of a Deadly Weapon (Felony) after he escaped from the facility. The individual was transferred to the county jail for 10 months after pleading guilty to the Burglary. After being released, he was placed on four years of probation. In March 1998, he violated probation by being arrested for Reckless Driving and was returned to jail for four months. Exs. 1 and 3.

In November 1999, the individual was arrested and charged with Driving While Intoxicated, Unlawful Acts and Reckless Driving. At the time, he was a minor and was on probation for another

charge. He later pled guilty to Reckless Driving and served 35 days in jail. In October 2001, he was arrested and charged with Driving Under the Influence of Alcohol with Accident, Unlawful Acts, Exceptions, and Insurance after he drove while intoxicated, swerved off the road and hit a tree. During his PSI, the individual admitted that he had never appeared in court on the charges and that the warrant is still active. On July 3, 2002, the individual was cited for Driving Without Insurance and Expired License Plates (on September 26, 2002, an arrest warrant was issued for Failure to Appear on the charges and on September 27, 2002, he was arrested on the warrant). Again, on July 13, 2002, the individual was arrested and charged with Driving While Ability Impaired, Driving Under the Influence of Alcohol, Registration, Fictitious Plate, Kidnapping, False Imprisonment, Domestic Violence, Invasion of Privacy, Wiretapping, Prevent Communication, Criminal Mischief and Assault-Menacing. The individual was intoxicated at the time and got into an argument with his mother who called the police after he left (on May 24, 2004, an arrest warrant was issued for Failure to Appear on the charges and on June 14, 2005, he was arrested on the warrant). In addition, on July 15, 2002, the individual's mother applied for a Temporary Restraining Order, which was later made permanent and was not dismissed until May 15, 2015. During his PSI, the individual admitted that he believed his mother applied for the restraining order because she felt threatened by him. *Id.*

On December 16, 2003, the individual was cited and charged with Driving Under the Influence of Alcohol and Defective Vehicle after he drove while intoxicated and was pulled over for a headlight malfunction. On January 13, 2004, he was again cited and charged with Driving While Ability Impaired after he drove while intoxicated. The charges were combined, and the individual left the state and did not initially go to court on the charges. However, on June 7, 2004, an arrest warrant was issued for Failure to Appear when he failed to appear on the charges. Subsequently, on June 14, 2004, the individual returned to the state and turned himself in. He thought he had taken care of the requirements, but had not. On December 10, 2007, a warrant was issued for Failure to Appear. In January 2013, the individual was notified by mail that he had an active warrant in the state. On his way to turn himself in, on March 9, 2013, the individual was involved in an accident. He was then arrested on the warrant that was issued for failing to appear on previous charges. He was also cited and charged with Failure to Display Insurance and Speeding Too Fast for Conditions. The individual appeared in court on May 14, 2015, and was remanded from the courtroom to begin a 15-day jail sentence. *Id.*

## **V. Analysis**

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors

prescribed in 10 C.F.R. § 710.7(c)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual should not be granted access authorization. The specific findings that I make in support of this decision are discussed below.

### **Criterion L Regarding Criminal Conduct**

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that he is reliable and trustworthy, and that he is no longer subject to pressure, coercion, exploitation or duress. For the reasons set forth below, I find that the individual has not provided sufficient information to resolve the Criterion L concerns at issue at this time.

During the hearing, the individual readily acknowledged his long history of criminal conduct, including his numerous charges and arrests. With respect to the charges and arrests for Domestic Violence that occurred between 1994 and 1996, the individual testified that during this time period he was in his teens and living with his mother. Tr. at 10. He explained that his mother was a drinker and a gambler and that he started using drugs heavily at this time which created a very stressful home environment. *Id.* The individual testified that the domestic violence primarily involved arguments with his mother and stated that he never hit her. *Id.* He further testified that the only times the arguments became physical were times when he attempted to restrain his mother. *Id.* According to the individual, in 1995, he was 16 years old and his drug use had become “pretty prolific” at this time. The individual testified that his social group consisted of drug users, and it was at this time that he was arrested for Grand Larceny after selling his mother’s stereo to buy cocaine. *Id.* at 11. The individual acknowledged that his criminal conduct continued through his teen years, and that, in 1999, alcohol issues began to be prevalent as he was charged with his first DWI offense. *Id.* at 14. He testified that he has paid and settled a March 2003 unresolved warrant regarding his 2001 DUI and that he currently has a hearing set in February 2016 to resolve the outcome of the case. Ex. D, Tr. at 19 and 20. In addition, the individual acknowledged that his mother filed a Restraining Order against him after they got into an argument in July 2002 and that it remained in place until May 2015 when his mother voluntarily removed it. Tr. at 24. According to the individual, he had forgotten about the restraining order until he was questioned about it during his background investigation. He testified that his relationship with his mother has improved somewhat and noted that his mother lived with him and his wife for approximately two months in 2014. *Id.* at 25.

The individual testified that he began changing his life in 2004, after he had received two DUIs within a month and a half. *Id.* at 26. He stated that he “sought out stability, family, love and just

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<sup>4</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

good people” in his life and left the state where he was living to live with his brother. *Id.* at 27. After this move, the individual found a good group of friends and eventually got married. *Id.* at 27 and 28. He testified that he changed everything about the way he lived, including his drinking habits. *Id.* The individual now drinks occasionally, maybe with dinner and does not drink to excess. *Id.* He testified that he now has a solid support system in place and believes that his criminal conduct and substance abuse were intertwined. *Id.* at 29. He reiterated that he was in a “bad situation” with his mother and the other type of people who were in his surroundings. *Id.*

According to the individual, since 2004, he has had no new criminal charges except his speeding ticket in March 2013. *Id.* He acknowledged, however, that he has had a number of arrest warrants issued when he failed to appear on various charges. *Id.* at 31. The individual expressed remorse for his behavior and testified that he wishes he had been more diligent in following up with his cases and cleaning up his past. *Id.* at 32. He testified that his lack of follow-up with court required counseling ultimately led to his 15-day jail sentence in May 2015. *Id.* at 32. Finally, the individual testified that he has made substantial changes in his life in light of his history of criminal conduct, has learned from his mistakes and is an honest and trustworthy individual. *Id.* at 34. In addition, he testified that he is more mature and responsible now; and understands the responsibilities and obligations that come with holding a security clearance. *Id.*

Among the factors which could serve to mitigate the security concerns raised by the individual’s pattern of criminal conduct are (1) 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; (2) the person was pressured or coerced into committing the act and those pressures are no longer present in the person’s life; (3) evidence that the person did not commit the offense; and (4) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement. *Guideline J* at ¶ 32 (a)-(d). None of these mitigating factors apply in this case. First, during the hearing, the individual acknowledged and accepted full responsibility for his criminal conduct. Second, although the individual did not receive any new charges since 2004, except for a speeding ticket in 2013, the individual has been arrested on warrants for Failure to Appear in 2013 and completed a 15-day jail sentence related to these warrants in May 2015. Moreover, although the warrant has been resolved, the disposition of the individual’s 2001 DUI charge still remains outstanding. Although a number of the individual’s criminal charges are not recent, occurring when he was a teenager and in his 20s, and although there is clear evidence of rehabilitation, this must be weighed against the individual’s long history of criminal conduct. The individual has made significant positive changes in his life. However, in light of the individual’s long pattern of criminal conduct and his unresolved criminal charge, I do not believe the individual has yet demonstrated a sufficient period of rehabilitation to convince me of his sound judgment regarding the safeguarding of classified information. Therefore, I

cannot find that the individual has resolved the security concerns arising from his past criminal conduct.

## **VI. Conclusion**

I find that there are valid security concerns that remain regarding Criterion L. I therefore conclude that the individual has not demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's request for access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. §710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: March 11, 2016