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

In the Matter of: Personnel Security Hearing)

Filing Date: April 4, 2016)

Case No.: PSH-16-0024

Issued: August 4, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (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, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored at this time.²

I. BACKGROUND

The LSO received information indicating that the Individual had a history of five alcohol-related arrests. In order to address those concerns, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual on October 28, 2015, and a Personnel Security Interview (PSI) of the Individual on November 18, 2015. Ex. 8, Ex. 5. Because the Individual’s responses to the LOI and the PSI did not resolve these concerns, the 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

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.doe.gov/OHA>.

regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on April 8, 2016.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse (the Spouse), his mother, his former attorney, his supervisor, and his Psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-16-0024 (hereinafter cited as "Tr."). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11, while the Individual submitted 21 exhibits, which are marked as Exhibits A through W.

II. THE NOTIFICATION LETTER AND THE DOE'S 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 paragraphs (f), (j), and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion F refers to information indicating that the Individual has: "Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8(f). Specifically, the Notification Letter alleges that the Individual: intentionally omitted his October 18, 2003, arrest for underage drinking, from the Electronic Questionnaire for Investigations Processing (e-QIP) that he submitted on June 4, 2015, failed to timely report his August 2, 2015, arrest for a domestic incident to the LSO, and omitted the August 2, 2015, arrest from the response to the LOI he submitted on November 6, 2015. These circumstances adequately justify the DOE's invocation of Criterion F, and raise significant security concerns. 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) state that, "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 information" and therefore can raise a security concern under Adjudicative Guideline E at ¶ 15. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Adjudicative Guideline E at ¶ 15.

Criterion J refers to information indicating that the Individual has: "Been, or is, a user of alcohol habitually to excess" 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that the Individual has incurred three alcohol-related arrests,³ and has admitted exceeding the United States Department of Health and Human Services, National Institute on Alcohol Abuse and Alcoholism, standards for excessive use of alcohol. These circumstances adequately justify the

³ As discussed in more detail below, the record shows that the Individual actually has a history of five alcohol-related arrests.

DOE's invocation of Criterion J, and raise significant security concerns. "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guideline G at ¶ 21. "Conditions that could raise a security concern and may be disqualifying include: . . . alcohol-related incidents away from work, such as driving while under the influence, . . . child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, [and] (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." Adjudicative Guideline G at ¶ 22(a) and (c).

Criterion L refers to information indicating that the Individual has: "Engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l). Specifically, the Notification Letter, citing three of the Individual's five alcohol-related arrests (the two most recent of which involved domestic violence), alleges that the Individual has exhibited a pattern of criminal conduct. "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 Guideline J at ¶ 30.

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. See 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. See 10 C.F.R. §§ 710.7(c), 710.27(a). 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

The Individual has a history of five alcohol-related arrests since 2003. On October 4, 2015, police arrested the Individual and charged him with Making Terroristic Threats, Unlawful Restraint, and Simple Assault.⁴ Ex. 9 at 1. On August 2, 2015, police arrested the Individual and charged him with Terroristic Threats.⁵ Ex. 4 at 4. On June 11, 2009, police arrested the

⁴ A police report dated October 4, 2015, provides the following account of this incident:

On Sunday, October 4, 2015 . . . Police Officers were sent to . . . for a report of a woman screaming inside her condo, and the caller reported that it sounded like the woman was thrown down the stairs. Upon our arrival we observed the [Spouse] sitting in her car. The [Spouse] stated that her intoxicated ex-boyfriend, the [Individual], assaulted her while she was trying to retrieve some of her personal belongings from the home because she is in the process of moving out. She had made 6 or 7 trips in and out of the condo taking things to her car without incident. She was walking back towards the door to the condo, and the defendant appeared in the doorway. He grabbed the [Spouse] and tried to pull her inside the condo. She tried to talk to the [Individual] and get him to calm down and release her. He told her he was going to make her pay. She tried to grab a pole to keep from being pulled into the condo, but he punched her in the area of her kidney on her left side. The [Spouse] started screaming hoping that a neighbor would call the police, and she was pulled inside the condo. He started punching her really hard on her left thigh. The [Spouse] said she was able to dial 911 on the phone in her pocket, and was disconnected. 911 called her phone back, and this made the [Individual] even more mad. He dragged the [Spouse] by the hair up the stairs. He dragged her into the bedroom and shoved her face into some kitty litter she had spilled while removing the kitty litter box earlier. He then punched her in her gut, and right kidney. She was trying to dodge his punches and use her arms to deflect them, and one of the punches was deflected into her face. The [Individual] turned his back on the victim for a moment, and she ran outside to her car. He chased after her, and the door slammed shut when he ran into it. She was able to call the police from a phone she had in the car and the [Individual] ran back in the condo. At this time police cars arrived on scene. The [Spouse]'s shirt was ripped, and she did have scratches and marks on her stomach, side, and back.

Ex. 7 at 8.

⁵ A police report dated August 2, 2015, provides the following account of this incident:

[The Individual's spouse] stated that . . . she was awakened by [the Individual] who reportedly had his hands around her throat, choking her and demanding that she give him the password to her cell phone. According to [the Spouse], she agreed to get him off of her and then she retreated to the bathroom. [The Spouse] stated that [the Individual] followed her in the bathroom and continued to slap her thighs as she was sitting on the toilet in a continued attempt to access her phone. As [the Spouse] got off the toilet, . . . [the Individual] immediately threw her on the bed, jumped on top of her and began to bite the fingers on her right hand, again in an effort to gain access to her phone. [The Spouse] was unclear how she separated from [the Individual] but eventually she left the apartment and walked toward [a grocery store] with [the Individual] following. [The Spouse] told me that her goal was to get to a public place to call the police. Once at the [grocery store], [the Spouse] stated that [the Individual] began threatening to kill her and calling her obscene words. She was able to gain distance from [the Individual] and asked a customer to call the police. As we were on scene, [a witness] approached [the Police] and stated that she witnessed [the Individual] tell [the Spouse] 'I'm going to kill you.'

Ex. 4 at 7.

Individual and charged him with Driving Under the Influence of Alcohol (DUI). Ex. 6 at 3-4. On May 12, 2006, police arrested the Individual and charged him with DUI. Ex. 7 at 2. On October 18, 2003, police charged the Individual with theft (of alcoholic beverages in a bar). Ex. 7 at 2-3.

A. The LOI

On October 28, 2015, the LSO issued the Individual a LOI in which it requested that the Individual provide: (1) a copy of the police report from the October 4, 2015 arrest, (2) “a detailed statement of the incident that resulted in your arrest,” (3) “results of your Employee Assistance Program evaluation,” (4) “copies of the incident reports regarding your arrest/citations for a 2003 theft; 2006 DUI; and 2009 DUI,” (5) a detailed narrative of the events that led to each arrest, and (6) the amount of alcohol that was consumed prior to each arrest, and the Individual’s blood alcohol level at time of both DUI arrests. Ex. 8 at 1.

On November 6, 2015, the LSO received the Individual’s Response to the LOI (the RLOI). In the RLOI, the Individual provided a copy of the police report of the October 4, 2015, arrest. The Individual stated that: “The police incident report regarding this matter contains information that is either embellished, or simply false.” Ex. 7 at 2. The Individual provided the following account of that incident:

On the evening of Sunday, October 4th, 2015, my fiancée, . . . engaged in an argument that escalated to a point where neighbors called the . . . police because of the noise. After the police arrived, they cited me with making terroristic threats, unlawful restraint, and simple assault. I was required to appear in front of the . . . Judge on Thursday, October 8, 2015 where I contested these charges.

Ex. 7 at 1. The Individual further reported that the Judge ordered him to undergo a drug and alcohol evaluation and to follow any recommended treatment. Ex. 7 at 1. The Individual stated:

As you will see, the results of the . . . Alcohol Use Screening recommend me to seek consultation with a mental health professional, which I have done. I will execute the allotted five sessions, as provided by our [EAP], then execute five additional sessions with my chosen professional after January 1st, 2016, as further provisioned by [his EAP]. I have also been regularly attending support group meetings to facilitate and maintain a healthy lifestyle.

Ex. 7 at 1-2. The RLOI also provided the Individual’s account of the circumstances which led to his 2003,⁶ 2006,⁷ and 2009⁸ arrests. The Individual supplemented the RLOI on November 10,

⁶ The Individual provided the following account of his 2003 arrest:

On October 18th, 2003, I was with a number of fraternity brothers in a ‘dive bar’ . . . There happened to be a cooler near the bar, one typical of supermarket check-out lines, in order for patrons to purchase six-packs to go. On that day, dissatisfied with the pace of service, a friend helped himself and others to one of the aforementioned six-packs. Once discovered, the police were called and citations were issued.

2015, by submitting the police report for his 2009 arrest. Ex. 6 at 1. The RLOI and its supplement do not contain any mention of the Individual's August 4, 2015, arrest.

B. The PSI

The LSO conducted a PSI of the Individual on November 18, 2015. Ex. 5 at 1. During this PSI, the Individual admitted that he had been arrested on October 4, 2015, for making Terroristic Threats, Simple Assault, and Unlawful Restraint. Ex. 5 at 5. The Individual admitted that prior to the incident which resulted in this arrest, he "had consumed a significant amount of alcohol," (estimating that he had consumed 10 to 12 beers over the course of a number of hours, beginning in the early afternoon and that he was intoxicated during this incident). Ex. 5 at 8, 17. The Individual stated that he suspected his girlfriend⁹ was seeing another man. Ex. 5 at 9. When she came home, she began removing her possessions from their home and he "tried to prevent her from leaving." Ex. 5 at 9-10. Specifically, the Individual stated: "I attempted to physically take her from outside and pull her back into the condominium." Ex. 5 at 11. His girlfriend fought his attempt to force her back inside. Ex. 5 at 10. According to the Individual, their yelling at each

Ex. 7 at 2.

⁷ The Individual provided the flowing account of the circumstances leading to his 2006 arrest:

On May 12th, 2006, while visiting my former undergraduate roommates at their residence . . . the police were called to the residence due to a noise complaint. After arriving on the scene, the police asked a number of us to clean up trash that had accumulated on the sidewalk outside of the row home. While parallel parked (and also blocked in by multiple police cars), I entered my car to retrieve a pack of cigarettes. I was arrested for DUI on a technicality being that I was occupying my vehicle while also having the keys on my person. At no point did I operate the vehicle, nor did I have any intention of operating any vehicle that evening as I planned on spending the night with my former roommates. Believing that I was being wrongfully arrested, I refused a breathalyzer (much to my later detriment). Though there is at this point no way to know what my BAC was, I am confident that at the time of arrest, it was in excess of the legal limit.

Ex. 7 at 2.

⁸ The Individual provided the flowing account of the circumstances which led to his 2009 arrest:

On June 9, 2009, while home on leave in between my specialty Navy training and permanent change of station orders . . . , I met with my Navy recruiter. . . . [who] took me out to a "liquid lunch," which then turned into a "liquid dinner." When I was finally on my way home, after the sun had gone down, I was pulled over for failing to use my headlamps (it was a well-lit area despite the sun having gone down). Of course the police officer . . . was easily able to detect the strong odor of alcohol on my breath. Though I did reasonably well of the field sobriety tests, I failed the breathalyzer and the subsequent blood test. All the while, I was respectful and courteous to the police officers. As such, they were quite willing to be extremely flexible with delayed court dates as to accommodate multiple overseas deployments. Once finally pleading guilty and being sentenced, I paid thousands of dollars' worth of costs and fines, served a driver's license suspension, and served a probationary period, all satisfactorily and without a single incident.

Ex. 7 at 3.

⁹ His girlfriend is now his spouse.

other alerted their neighbors. Ex. 5 at 11. The interviewer asked the Individual if he had threatened his girlfriend during this incident. The Individual responded by stating that he did not say “I’m going to make you pay” to his girlfriend, but that he did admit: “I likely said, made some sort of threatening words to her,” and “I would not deny that I made, said, spoke, yelled threatening words to her.” Ex. 5 at 12. The Individual admitted that he hit his girlfriend in the leg during this incident. Ex. 5 at 12. He claimed that his girlfriend was fighting back and hitting him in his face during this incident. Ex. 5 at 12. The Individual stated that his girlfriend emptied a litter box into their bed. Ex. 5 at 13. The Individual claimed that he forced his girlfriend on to the bed with him, not realizing that she had emptied the litter box on their bed. Ex. 5 at 13. He admitted her face made contact with the kitty litter. Ex. 5 at 13. The Individual acknowledged that his behavior on October 4, 2015, was “massively unacceptable.” Ex. 5 at 14. As a result of this incident, a court ordered the Individual to undergo evaluation by the Employee Assistance Program (EAP). Ex. 5 at 18. The Individual claimed that the (October 4, 2015) police report was somewhat exaggerated and had inaccuracies in it. Ex. 5 at 65. The interviewer asked the Individual for examples of the police report’s exaggerations or inaccuracies. The Individual responded by stating that the kitty litter never made contact with his girlfriend’s face. Ex. 5 at 65. He claimed that he did not recall pulling her hair. Ex. 5 at 66.

The Individual admitted that he had three additional alcohol-related arrests. Ex. 5 at 19. The Individual further admitted that when he plead guilty to the 2009 DUI, the Court required him to attend DUI school, and placed him on probation for 18 months. Ex. 5 at 26-27. When the Individual was asked by the interviewer about the 2006 DUI, the Individual recalled that he had been drinking with some friends at one of their apartments when the police were summoned because of noise complaints. Ex. 5 at 31. The Individual admitted that he was very intoxicated during this incident, estimating that he consumed approximately 12 drinks over four and one-half hours prior to the 2006 arrest. Ex. 5 at 32, 34. The Individual claimed he was arrested for entering his parked car while intoxicated, even though he had no intention to operate it. Ex. 5 at 32-33. The police also accused him of resisting arrest. Ex. 5 at 33.

When the interviewer asked the Individual about his 2003 arrest for petty theft, he recounted that he and four or five friends had visited a bar. One of his friends had stolen a six pack of beer that was in a cooler and gave the Individual a beer, which he began to consume. Ex. 5 at 39. Someone alerted the police, and the Individual was arrested. Ex. 5 at 39. The Individual admitted that he been consuming alcohol when this incident occurred, and that he was a minor in possession of falsified identification at this time. Ex. 5 at 39-40.

The Individual reported that his drinking has tapered since July 2014. Ex. 5 at 45. The Individual stated that he “very often” has a glass of wine or a beer with dinner on week days, and two to four beers on Fridays and Saturdays. Ex. 5 at 46. The Individual admitted that his girlfriend and family have expressed concern about his drinking. Ex. 5 at 48-49, 56. The Individual acknowledged that he has experienced an increase in the amount of alcohol he has consumed. Ex. 5 at 50. The Individual acknowledged that he had consumed two beers the night before the PSI. Ex. 5 at 51. The Individual acknowledged that his alcohol use had cost him “a lot of lost time” from work when he would sleep in or not be “fully functional the next day.” Ex. 5 at 52. The Individual also admitted that he had driven, without incident, while intoxicated in June 2015. Ex. 5 at 52. The last time he was intoxicated was when he was arrested on October

4, 2015. Ex. 5 at 53. The interviewer asked the Individual if he ever thought he should cut down on his drinking. The Individual responded by stating: "I have thought that I need to develop the emotional maturity, and the coping mechanisms to deal with life, and not use alcohol as a crutch. And, it's unhealthy. It's not normal to drink 12 beers." Ex. 5 at 53. The Individual also admitted feeling bad or guilty after each of the incidents discussed above. Ex. 5 at 55. The Individual could not explain why he continues to drink after the incidents discussed above. Ex. 5 at 55. The Individual indicated he had attended four Alcoholics Anonymous (AA) meetings since October at his own behest. Ex. 5 at 68-69. The Individual indicated that he does not believe he is an alcoholic or that he has an alcohol disorder. Ex. 5 at 69. He stated that he intended to abstain from further alcohol use. Ex. 5 at 69. The Individual stated that he is working hard to resolve his issues through the EAP. Ex. 5 at 63. He has begun seeing a counselor through his EAP. Ex. 5 at 73.

During the PSI, the interviewer asked the Individual: "Any other arrests that we haven't talked about?" The Individual responded by stating: "Not to my recollection, sir." Ex. 5 at 41. Later on during the PSI, the Individual was asked if that were "any other domestic disturbances at all?" The Individual then reported that he had been arrested for a domestic incident in August 2015. Ex. 5 at 57. This was the first time that he had reported this incident to the LSO. The Individual admitted that he had not yet reported this arrest to the LSO because he "was awaiting a court date." Ex. 5 at 57. The Individual indicated that he was aware that he was expected to report the arrest within two days, but did not do so because he was nervous and unsure about what would happen. Ex. 5 at 57. The Individual also explained that he was waiting for the chance to discuss this incident in person. Ex. 5 at 62. The Individual explained that his girlfriend had been seeing another man. Ex. 5 at 59. When she received some text messages and voice mails from this other man professing his love for her, he woke her up to demand the pass code to her phone so he could read the text messages and listen to the voice mails. Ex. 5 at 59-60. She refused to provide him with the pass codes and an argument ensued. Ex. 5 at 60. She then suggested that they go for a walk and they walked to a nearby grocery store. Ex. 5 at 60. The Individual claimed that he and his girlfriend were not arguing, but "eventually somebody called the police, because this, at this point it was like 1:30 in the morning." Ex. 5 at 60, 82. The Individual admitted that he had consumed four or five beers on the night of the August 2, 2015, arrest. Ex. 5 at 61.

C. The Hearing

The Individual attempted to resolve the security concerns discussed above by submitting the testimony of his Psychologist, Spouse, Mother, and Supervisor, as well as by providing his own testimony. The Individual also submitted 21 documentary exhibits.¹⁰

¹⁰ These exhibits included some helpful information: including letters of reference (Ex. A, I), proof of his AA meeting attendance (Ex. Q), proof of his-court mandated counseling program completion (Ex. O, P), court records indicating the disposition of his two recent arrests (Ex. R, Ex. S), psychological records (Ex. N, Ex. U, Ex. V), and documents which detailed his distinguished military career (Ex. J, K, L). However, many of the exhibits submitted by the Individual were of questionable relevance to the issues before me: including the Individual's autobiography (Ex. C), resume (Ex. D), driver's license (Ex. F), academic transcript (Ex. G), list of collegiate extracurricular experiences (Ex. H), marriage vows (Ex. W), and family photographs (Ex. E).

During his hearing testimony, the Individual testified that he is remorseful for his actions. Tr. at 180. He further testified that “I know with every fiber of my being that I am not a security risk.” Tr. at 180. The Individual testified that he has the support of his friends, family, and especially, his Spouse. Tr. at 182. The Individual tried to explain why he delayed reporting his August 2, 2016, arrest until his November 18, 2015, PSI: stating that he delayed because he was “scared” and “afraid,” and because his personal life was in upheaval. Tr. at 192. He further testified: “My flawed logic was then I'm going to wait until the disposition hearing for this event, which I was reasonably confident was going to end favorably, that the charge was going to be dismissed. And at that time, I would then report the incident.” Tr. at 193. The Individual admitted that his friends and family had expressed concerns about his alcohol consumption, to which he would respond defensively. Tr. at 196. The Individual acknowledged he has a problem with alcohol, and that alcohol was a common denominator in all of his legal issues. Tr. at 199-200, 204-205, 238-239. He testified that in order to deal with his emotional issues, he needed to remove alcohol from the equation. Tr. at 202. The Individual testified that he is committed to long-term abstinence from the use of alcohol. Tr. at 220. He testified that as a result, he is happier and has “experienced a clarity that I have never had before.” Tr. at 202. The Individual testified that he did not believe that the police report for the August 2015 incident “is truly representative of the course of events.” Tr. at 207. When the Individual was asked what he did wrong during this incident, he stated:

What did I do wrong? Well, I emotionally was incapable of handling the events and life circumstances that led me to that event. Next, what was wrong was I decided to consume alcohol, the very common denominator in every other instance or problem in my life. So that's -- that's a huge problem. I think I also was placing blame for the events evening happening. I blamed it on my fiancée. I blamed it on that other man. You know, they were doing this to me. I didn't consider the fact that I'm not the best version of myself. I wouldn't want to date myself. How could I possibly blame my fiancée for not wanting to be with me? I was deflecting responsibility for it.

Tr. at 208. Turning to the October 2015 incident, the Individual acknowledged that he had attempted to physically force the Spouse back into their home and had struck the Spouse in her leg. Tr. at 213-214. The Individual stated that he did not report the 2003 arrest as alcohol-related because he was charged with theft, and therefore did not consider it to be an alcohol-related arrest, even though the item stolen was a beer. Tr. at 225. The Individual testified that he was certainly not trying to be deliberately vague or deceptive, when he omitted this arrest from his e-QIP. Tr. at 226-227. The Individual was asked why, during the PSI, he did not initially admit that he had been arrested in August 2015, when he was asked if there were any other arrests that he had not reported to the LSO. The Individual responded by stating: “I don't recall specifically the sequence of questions. I had resolved that I was going to disclose the August incident in that personnel security interview, although going into it, I didn't know exactly when I was going to, I just knew that I was.” Tr. at 230. The Individual acknowledged that he was hoping that he could report the incident after it had been resolved in his favor. Tr. at 232. The Individual admitted consuming alcohol prior to the August 2015, and October 2015 incidents. Tr. at 234. The Individual testified that he is now more able to handle intrapersonal conflict through communication. Tr. at 240. When the Individual was given the chance to contradict the

October 4, 2015, police report, the Individual denied the report's claims that he had thrown the Spouse down the steps, that he had punched her in the gut and kidney, and that he had dragged her into the bedroom and put her face in kitty litter. Tr. 246-248. When the Individual was given the chance to contradict the August 2, 2015, police report, the Individual denied choking the Spouse or putting his hands around her throat, slapping her thighs, biting the Spouse, or threatening to kill her. Tr. at 248-250.

The Spouse testified on the Individual's behalf at the hearing. She testified that she has known the Individual for 17 years. Tr. at 140. The Spouse testified that some of the information she supplied to the arresting officers during the August 2015 and October 2015 incidents may have been inaccurate because she was intoxicated and emotionally charged when she provided it. Tr. at 132-134. She admitted that the Individual emotionally and physically harmed her during these incidents. Tr. at 133. The Spouse opined that the Individual has "deep-seated underlying issues that he just never dealt with." Tr. at 134. She further opined that these issues were "fueled" by alcohol "to a level that . . . made it impossible to deal with. He would try to numb whatever he was dealing with by alcohol in an attempt to erase the problems, and it only caused more." Tr. at 135. The Spouse testified that their difficult relationship always had a strong foundation, and that their relationship is now "really strong," because the Individual has overcome his relationship ambivalence and because he stopped using alcohol. Tr. at 139. The Spouse testified that the Individual did not seem to be having any problems with abstaining from the use of alcohol. Tr. at 157. She testified that they do not keep alcohol in their home anymore. Tr. at 158. She testified that the Individual had attended several AA meetings, but has not done so since October or November of 2015. Tr. at 161, 172. She believes that the Individual's attendance at AA meetings, counseling sessions with the Psychologist, and his impending fatherhood motivated him to stop using alcohol. Tr. at 161. The Spouse believes that the Individual was a binge drinker. Tr. at 163. She believes that the Individual is committed to remaining abstinent from alcohol. Tr. at 164. She testified that she and the Individual are undergoing marriage counseling. Tr. at 165. The Spouse testified that the Individual's friends support his decision to abstain from alcohol use. Tr. at 169. She testified that the Individual had attended between 10 and 20 anger management classes. Tr. at 173. She testified that the Individual now communicates with her instead of "stewing." Tr. at 176. The Spouse said that she has known the Individual for 17 years, and that the August 2015 and October 2015 incidents were the only occasions that he had been involved in violence. Tr. at 141. The Spouse testified that the August 2015 incident began with the Individual waking her up and yelling at her about text messages. Tr. at 147. She realized he had been drinking and got him to take a walk with her in order to de-escalate the situation. Tr. at 147. The Spouse testified that the October 2015 incident began when she returned to their home from a car trip with her mother and nieces. Tr. at 150. The Individual, who she believes to have been intoxicated at the time, accused the Spouse of being with another man. Tr. at 150. The Spouse then started to move out of their home, and a physical altercation ensued. Tr. at 150-151. The Spouse testified that she dumped their cat's litterbox on a bed, which infuriated the Individual. Tr. at 151-152. When she left their home, he tried to physically pull her back inside. Tr. at 152. At some point, he struck her in her leg. Tr. at 152. She retreated to her car and tried to call the police. Tr. at 153.

The Individual's mother testified at the hearing. Tr. at 107. She testified that she has been concerned about the Individual's use of alcohol, and that she and his father have discussed their

concerns about his alcohol use with him. Tr. at 116-117. She has noticed marked improvement since he has undergone counseling. Tr. at 117. His marriage also seems to have been a positive turning point for her son. Tr. at 118. She testified that her son is now a happier, and more compassionate, person. Tr. at 118-119, 127. She has not observed any signs of alcohol use on the part of her son, since the October 2015 incident. Tr. at 121, 123. He has told her, and his family, that he plans to abstain from using alcohol. Tr. at 121-123, 126.

The attorney (the Attorney) who had defended the Individual for his August 2015, and October 2015, arrests testified on his behalf at the hearing. The Attorney testified that the Individual was a friend of his son's and that he had known him for about 20 years. Tr. at 65. The Attorney testified that he has been in practice for thirty-nine years and that 75-80 percent of his practice is criminal defense. Tr. at 65. He further testified that he is familiar with the local prosecutor's offices, the people in the local court system, and the local police department. When he was asked if he was concerned that the police reports for the August 2015 and October 2015 arrests had been falsified, the Attorney testified: "no." Tr. at 81. He further testified that he was unaware of any exaggeration in the police reports for either of the incidents. Tr. at 82. He testified that he knew the officers who had prepared the reports, and had no experiences with them being dishonest. Tr. at 82.

The Psychologist, a Clinical Psychologist, testified on the Individual's behalf at the hearing. Tr. at 18. The Psychologist testified that he has been treating the Individual for relationship problems and alcohol abuse since November 14, 2015, when the Individual was referred to him by his EAP. Tr. at 21-22. The Psychologist testified that he has had a total of nine counseling sessions with the Individual. Tr. at 29, 54. The Psychologist testified that he believed that the Individual had been candid, frank, sincere, and straightforward with him. Tr. at 23-26. He testified that he did not observe any defensiveness or denial on the part of the Individual, and that the Individual took responsibility for his actions. Tr. at 26. The Psychologist testified that the Individual has abstained from using alcohol since October 2015.¹¹ Tr. at 28, 44-45. When the Individual's attorney asked the Psychologist whether the Individual is capable of responsible alcohol use at some point in the future, he responded by stating: "that is going to be his decision. I think he has learned and knows what is possible when he uses or overuses, and it would be advisable not to get into that if possible." Tr. at 28. The Psychologist noted that the Individual has "resolved a major decision in his life, involving an interpersonal relationship, and has been abstinent from alcohol since October of his own volition." Tr. at 29. The Psychologist testified that he had diagnosed the Individual with an anxiety disorder. Tr. at 29. He further testified that the Individual now seems "more calm and resolved" since he passed "an extremely troubling choice point in his life." Tr. at 30. The Individual is now more aware of his triggers for anxiety, and "has made great progress in sort of his own self-understanding and his communication process, in particular." Tr. at 31, 37. The Psychologist testified that the Individual has developed improved coping strategies, noting that the Individual "describes himself, of late, as just being much more communicative with significant people in his life, and much more focused on things that upset him, and if you will, on getting them out instead of internalizing them." Tr. at 31, 35-36. The Psychologist testified that the Individual has learned to be "open and proactive in his communicative process so that he does not over internalize -- if you will -- these cognitive

¹¹ During the PSI, the Individual had stated that his last use of alcohol had occurred on November 16, 2015. Ex. 5 at 51.

fantasies or distortions.” Tr. at 36. The Psychologist testified that the Individual was using alcohol to “assuage or medicate” his anxieties. Tr. at 31. The Psychologist opined that he believes that the Individual is now equipped to face his anxieties. Tr. at 32. The Psychologist further opined that the Individual has an alcohol use disorder, under the American Psychiatric Association’s Diagnostic and Statistical Manual, Fifth Edition (DSM-5), of “mild severity.” Tr. at 32-33, 40. The Psychologist testified that incidents leading to the Individual’s two recent arrests were “isolated incidents.” Tr. at 35. The Psychologist opined that the Individual decision to marry his spouse, and his impending fatherhood, has motivated him to “change for the better.” Tr. at 36. The Psychologist opined that the Individual’s alcohol disorder is now in partial remission. Tr. at 45. The Psychologist testified that he would like to see the Individual become involved in an AA or similar program to help him address any temptations to use alcohol. Tr. at 46. The Psychologist acknowledged that the potential for setbacks in his relationship with his spouse, and his impending fatherhood constitute risk factors to his recovery. Tr. at 47. The Psychologist testified that he fully expects that the Individual will achieve full remission once he has abstained from using alcohol for a period of twelve months. Tr. at 50. The Psychologist testified that that the Individual’s prognosis is “pretty good.” Tr. at 54.

V. ANALYSIS

A. Falsification

The record shows that the Individual deliberately concealed his August 2, 2015, arrest for Terroristic Threats from the LSO, by failing to report this request, as required, to the LSO in a timely manner.¹² The Individual continued concealing this information from the LSO for over three months, until his November 18, 2015, PSI, when he finally, upon repeated questioning, reported this incident. The security concerns raised by the Individual’s concealment of his August 2, 2015, arrest are magnified by the Individual’s conduct during the PSI, where he replied in the negative when he was initially asked if he had any other arrests he wished to disclose. Moreover, the Individual, during both the PSI and the hearing, has attempted to avoid responsibility for his actions leading to this arrest by impeaching the credibility of the police report. These attempts to impeach the police report’s credibility were not supported by the testimony of the Spouse or the Attorney. Adjudicative Guideline E provides a list of seven conditions that can mitigate security concerns arising from an individual’s personal conduct. Guideline E at ¶ 17. None of those conditions are present in the instant case.

¹² The Notification Letter asserts that the Individual’s failure to report the August 2, 2015, arrest in his response to the LOI raises an additional security concern. However, none of the questions in the LOI required the disclosure of the August 2, 2015, arrest. Accordingly, the Individual’s answers to the questions posed to him in the LOI were full and complete, and do not raise any additional security concerns. The Notification Letter also notes that Question 22 of the eQIP submitted by the Individual on June 4, 2015, required him to disclose any alcohol-related arrests. The Individual omitted his 2003 arrest from his answer to this question, after disclosing his 2006, 2009 arrests. (The 2015 arrests had not yet occurred when the Individual submitted his June 4, 2015, eQIP). The Individual has explained that, while his 2003 arrest involved the theft of beer, he did not consider it an alcohol-related arrest because he was charged with theft, rather than any offense pertaining to alcohol. Since I find this explanation plausible, I am of the opinion that, in this case, the Individual was not attempting to deceive the LSO by omitting this arrest from his eQIP. Accordingly, I find that the security concerns raised by the Individual’s omission of his 2003 arrest from the June 4, 2015, eQIP are sufficiently mitigated.

After carefully considering all the evidence, I find that the Individual has not mitigated the concerns raised by his deliberate concealment of his August 2, 2015, arrest from the LSO. Accordingly, I find that the security concerns raised by his personal conduct under Criterion F have not been resolved.

B. Habitual Use of Alcohol to Excess and Criminal Conduct

The Individual has a history of five arrests, which raises significant security concerns, especially since two of these arrests occurred fairly recently. Each of these five arrests have a common denominator: the Individual had been consuming alcohol (often in large quantities) prior to the incidents which led to the arrests. As a result, I cannot consider the security concerns raised by the Individual's history of five arrests sufficiently mitigated unless I am convinced that he has resolved his alcohol issues.¹³

The LSO has not relied upon the opinion of a mental health or substance abuse professional in raising issues concerning the Individual's alcohol use under Criterion J, relying on its finding that the Individual is "a user of alcohol habitually to excess." 10 C.F.R. § 710.8(j). No expert opinion is necessary for finding that an Individual uses alcohol habitually to excess, since that term is not regularly used by mental health and substance abuse professionals, but rather is a regulatory term of art that essentially means that he is accused of becoming intoxicated on an excessively frequent basis. The phrase "user of alcohol habitually to excess" is not set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, as a formal psychiatric diagnosis, nor is it defined in the Part 710 regulations. However, OHA Administrative Judges have addressed the application of this phrase in numerous Decisions, and have defined it as properly applying to individuals who drink to intoxication as a customary practice or pattern. *See, e.g., Personnel Security Hearing, Case No. PSH-12-0113 (2012); Personnel Security Hearing, Case No. TSO-0738 (2009); Personnel Security Hearing, Case No. TSO-0793 (2009); Personnel Security Hearing, Case No. TSO-0738 (2009); Personnel Security Hearing, Case No. TSO-0453 (2007).* The Notification Letter, however, relies upon the LSO's finding that the Individual meets the United States Department of Health and Human Services, National Institute on Alcohol Abuse and Alcoholism, standards for excessive use of alcohol, to find that the Individual habitually uses alcohol to excess. However, OHA Administrative Judges have found that reliance on such standards are crafted to preserve physical health, rather than mental health or to identify security concerns, and are therefore not appropriately used as a standard for determining whether an individual uses alcohol habitually to excess. *Personnel Security Hearing, Case No. PSH-14-0020 (2014).*

Nevertheless, the Individual acknowledges that he has a problem with alcohol, and has sought counseling, attended a number of AA meetings, and most importantly, has been abstaining from the use of alcohol with a stated intention to permanently abstain from alcohol use.

The question before me then is whether the Individual is likely to permanently abstain from using alcohol. I note that the Individual's treating Psychologist testified that he diagnosed the

¹³ The resolution of the Individual's alcohol issues is a necessary, but not sufficient, condition precedent for finding that the security concerns raised by his pattern of five arrests have been resolved.

Individual with Alcohol Use Disorder, Mild under the DSM-V (or alternatively Alcohol Abuse Disorder under the DSM-IV-TR). The Psychologist further testified that the Individual's Alcohol Use Disorder was in partial remission and that the Individual's prognosis was "pretty good." While there is no contrary expert opinion, I am not convinced that the Individual's recovery has sufficiently progressed to resolve the security concerns arising from his frequent intoxication and from his demonstrated pattern of engaging in criminal conduct while under the influence of alcohol. I note that, at the time of the hearing, the Individual had only abstained from using alcohol for six and a half months. In most cases, mental health and substance abuse practitioners generally require a year's abstinence before concluding that a patient is in sustained remission, and this standard is incorporated in the DSM-V. DSM-V at page 491. Moreover, the treatment program undertaken by the Individual, i.e. sporadic attendance of AA meetings in late 2015 (without the Individual having obtained a sponsor or working the Twelve-Step Program), nine counseling sessions with the Psychologist (in which the focus was upon relationship issues, rather than substance abuse) was not particularly intensive. The Individual has made progress as a result of these efforts. However, the Individual's recovery is obviously still in its beginning stages. Therefore, after carefully considering all the evidence, I find that the Individual has not shown that he is sufficiently reformed or rehabilitated from his Alcohol Abuse Disorder to resolve the concerns arising from the risk that he might return to habitual use of alcohol to excess. Accordingly, I find that the security concerns raised under Criterion J have not been resolved.

The Individual's five alcohol-related arrests demonstrate a pattern of criminal conduct that raises security concerns under Criterion L. This conduct is clearly symptomatic of his Alcohol Abuse Disorder. Given the role that alcohol has played in the Individual's past conduct, I find that since the concerns raised by his Alcohol Abuse Disorder have been not been resolved, the concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct under Criterion L have not yet been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria F, J, and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated the Criteria F, J, and L security concerns. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: August 4, 2016