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

In the Matter of: Personnel Security Hearing )  
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Filing Date: April 13, 2018 ) Case No.: PSH-18-0032  
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Issued: July 12, 2018

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

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

**I. BACKGROUND**

The Individual is an applicant for a DOE Security Clearance. His initial background investigation revealed that he has a history of five alcohol-related arrests between 2003 and 2013, and had been the subject of a number of employment terminations. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on July 7, 2017. During this PSI, the Individual initially provided misleading information concerning his use of alcohol, although he later became more forthcoming about his alcohol use during the PSI. Because the background investigation and the PSI raised concerns about the Individual’s alcohol use and psychological state, the LSO asked the Individual to undergo a forensic psychological evaluation by a DOE Psychologist (the Psychologist). The Psychologist conducted an evaluation of the Individual on October 19, 2017. On October 24, 2017, he issued a report in which he concluded that the Individual meets the criteria set forth in *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)* for Substance Use Disorder - Alcohol, moderate, and for “facets of Antisocial Personality Disorder.” Ex. 1 at §§ II.A and III. The Psychologist further opined that both conditions can impair the Individual’s judgment, reliability, stability, and trustworthiness. 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

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

Administrative Judge in order to resolve the substantial doubt 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 the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on April 13, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his mother, his second level supervisor, his girlfriend, his union representative, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0032 (hereinafter cited as "Tr."). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as "Ex."). The Individual did not submit any exhibits.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E, G, I, and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Under Guideline E: Personal Conduct, the LSO alleges that the Individual has failed to provide truthful and candid answers during his PSI, when he misrepresented the frequency with which he consumed alcohol, the amount of alcohol he would consume, and whether his alcohol consumption would result in intoxication. "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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." Guideline E at ¶ 15. These allegations adequately justify the LSO's invocation of Guideline E.

Under Guideline G: Alcohol Consumption, the LSO alleges that the Individual has been diagnosed by the Psychologist with Substance Use Disorder - Alcohol, moderate, under the DSM-5. The LSO further alleged that the Individual had a history of five alcohol-related arrests during the period beginning on November 12, 2003, and continuing through December 2013. In addition, the Individual admits that he stabbed his brother with a steak knife while he was under the influence of alcohol on February 10, 2007. This information adequately justifies the LSO's invocation of Guideline G and raises significant security concerns. The Adjudicative Guidelines state: "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." Guideline G at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as driving while under the influence, fighting, . . . disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder." Guideline G at ¶ 22(a). Guideline G further provides that a "diagnosis by a duly qualified medical or mental health professional . . . of [an] alcohol use disorder" "could raise a security concern and may be disqualifying." Guideline G at ¶ 22(d). These allegations adequately justify the LSO's invocation of Guideline G.

Under Guideline I, Psychological Conditions, the LSO alleges that the Psychologist has concluded that the Individual meets the criteria for “facets of Antisocial Personality Disorder” under DSM-5. Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Guideline I at ¶ 28. Guideline I further provides that “an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness” may raise a security concern and be disqualifying. Guideline I at ¶ 28(b). Accordingly, these allegations adequately justify the LSO’s invocation of Guideline I.

Under Guideline J: Criminal Conduct, the LSO alleges that the Individual has been cited for Open Container, Driving While Intoxicated (DWI) (two occasions), aggravated DWI, and for Shoplifting alcoholic beverages.<sup>2</sup> In addition, the Individual admits that he stabbed his brother with a steak knife while he was under the influence of alcohol. Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness and calls into question a person’s ability or willingness to comply with laws, rules, and regulations. Guideline J at ¶ 30. These six allegations of criminal activity adequately justify the LSO’s invocation of Guideline J.

### **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), 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 or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The 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. 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. Ex. A at Paragraph IV.B.

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**

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<sup>2</sup> In addition, the Notification Letter cites the fact that a person obtained a restraining order against the Individual in 2011, but does not explain how that restraining order evidences criminal activity on his part.

The Individual is an applicant for a DOE security clearance. During his background investigation, the LSO obtained information indicating that the Individual has a history of five alcohol-related arrests or citations,<sup>3</sup> and a history of several employment terminations. One such termination resulted from an incident in May 2015, in which the Individual was denied an apartment at a low income housing complex, because his income was too high. The individual then forged the signature of the head of his employer's human resources department on an income statement which understated his income, in an effort to qualify for the low income housing. Ex. 10 at 69. Another of these terminations resulted when the Individual was found to have had three separate safety violations within a six month period. Ex. 10 at 71.

Because of the security concerns raised by these arrests and terminations, the LSO conducted a PSI of the Individual on July 7, 2017. During the PSI, the Individual admitted that he had experienced difficulty in maintaining employment, including several terminations, because of his poor "attitude" and misconduct. Ex. 9 at 35-55. The Individual admitted that he was terminated on May 13, 2015, by his employer for forging a document on company letterhead intentionally minimizing his income in order to qualify for subsidized low-income housing. Ex. 9 at 50-51. He stated that he had not had any problems at his current employer because he has matured and stabilized. Ex. 9 at 56-57. The Individual admitted that he had been drinking before each of his DWI arrests and his citation for Open Container. Ex. 9 at 62-65, 76-78, 83, 91-92. The Individual admitted that he has driven while intoxicated on 50 to 90 occasions. Ex. 9 at 117. The Individual admitted that he had shoplifted alcohol on two occasions and was arrested on the second occasion. Ex. 9 at 121-122. The Individual acknowledged that alcohol has caused serious problems for him. Ex. 9 at 124. He further admitted that, in 2007, he had stabbed his brother "in the kidney area" with a steak knife during a fight when the Individual was intoxicated. Ex. 9 at 150-154. The Individual initially claimed that he was presently only using alcohol about once a month, would limit himself to one beer, and had not consumed alcohol to the point of intoxication for several years. Ex. 9 at 109-112. When confronted with conflicting statements that he had made to the Office of Personnel Management investigator, however, the Individual admitted that he would consume "four to five shots of hard liquor and three to four beers in a two to four-hour time" on "an average of two to three times a week." Ex. 9 at 140-141. The Individual then further admitted that he is most likely intoxicated on a weekly basis. Ex. 9 at 141.

Because the PSI did not resolve the security concerns raised by the Individual's initial background investigation, and raised additional security concerns, the LSO requested that the Individual be evaluated by the Psychologist. The Psychologist evaluated the Individual on October 19, 2017, and issued his Psychological Assessment of the Individual on October 25, 2017. Ex. 6 at 1. In his Psychological Assessment, he opined that the Individual's "misrepresentation of facts, his history of criminal arrests, his several issues with employers, his tendency to fight taking responsibility for his behaviors, and his tendency to attribute blame for his misbehavior to others raised the concern that he might have antisocial tendencies." Ex. 6 at 35. The Psychologist further opined that the Individual's

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<sup>3</sup> In December 2013, the Individual was cited for Open Container. On September 18, 2010, police charged him with DWI. On April 8, 2006, and in January 2005, police charged him with Aggravated DWI. On November 12, 2003, he was cited for shoplifting alcohol.

...reactive tendency to respond to confrontation with angry retorts has become much more controlled over the last two years but will remain a vulnerability probably for the rest of his life. . . . His gross misrepresentation of his drinking appears motivated by the same effort to avoid having other's judgments of his behavior control or limit him. His significant misrepresentations to the PSS three months ago reveals that this remains an active tendency. The smoothness with which he lied suggests that this is a practiced, well used tendency and, if the PSS had not had access to other information, his obscuration might have gone unnoticed. . . . It is my opinion, however, that being untruthful will be a hard tendency for him to break when he finds himself "trapped" (his word), if he does not engage in a therapy. This tendency is not just a problem in his youthful past but is a current behavior, even while he was under oath in the PSI. His frank admission of his untruths during the PSI and his grasping that lying is a tendency that he has to avoid to stabilize his life are promising attitudes that should support his changing.

Ex. 6 at 7-8. The Psychologist found that the Individual meets several DSM-5 criteria for Antisocial Personality Disorder, but failed to meet one of the essential criteria. Ex. 6 at 8. He therefore diagnosed the Individual "with having a mental condition with facets of an Antisocial Personality Disorder (but not sufficiently meeting all of the criteria). Ex. 6 at 8. The Psychologist further diagnosed the Individual with "Substance Use Disorder- Alcohol, moderate." Ex. 6 at 8. The Psychologist further opined that the Individual was not rehabilitated from these two conditions, noting that the Individual had continued to consume alcohol heavily until three years ago, and that not enough time had passed "to be confident that the Individual had achieved sustained control over his use of alcohol." Ex. 6 at 9. He further noted that the Individual's history of minimizing his alcohol use "makes it difficult to believe assertions he might make about his sobriety." Ex. 6 at 9. The Psychologist recommended that the Individual make a lifelong commitment to abstain from alcohol use and attend an Intensive Outpatient Program (IOP). Ex. 6 at 9. In order to address the Individual's facets of Antisocial Personality Disorder, the Psychologist recommended that the Individual attend "a dynamic, verbal therapy meeting at least weekly." Ex. 6 at 9.

At the hearing, the Individual presented testimony showing that he recognized that he has an alcohol problem and that he understood that his personality issues had interfered with his career, led to several terminations, and caused him unhappiness. He sought to demonstrate that, although he has forgone counseling until very recently, he has changed his life, maintained steady employment for the past three years,<sup>4</sup> entered into a serious long-term relationship,<sup>5</sup> assumed a parental role for his girlfriend's daughter, and has not used alcohol for a year.

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<sup>4</sup> The Individual's second level supervisor for the past three years testified that the Individual is a very good employee. Tr. at 13-14. The second level supervisor further testified that the Individual is very reliable and gets along well with his coworkers. Tr. at 13-14. The Individual has never had any incidents at work. Tr. at 14. The Individual's Union Representative testified that he has not known the Individual to act impulsively or aggressively. Tr. at 59-60. He noted that the Individual is very punctual and dependable, and that he has never known the Individual to be dishonest. Tr. at 60-61. It is his understanding that the Individual has not used alcohol for "years." Tr. at 61. He believes the Individual to be very trustworthy. Tr. at 61. He stated that he does not hear of any problems with the Individual at the Individual's workplace. Tr. at 61.

<sup>5</sup> The Individual's girlfriend testified at the hearing that she has been living with him for the past three years. Tr. at 34. She further testified that the Individual has not used alcohol for almost a year, and intends to abstain from using alcohol in the future. Tr. at 35-36, 44. She testified that the Individual used to use alcohol at home. Tr. at 36-37. She noted

The Individual identified himself as an “alcoholic” and testified that will always be an alcoholic.<sup>6</sup> Tr. at 101, 121. The Individual testified that he has not driven under the influence since his last DWI, and he plans to completely abstain from alcohol use for the rest of his life. Tr. at 72-73, 120-121. The Individual testified that he has not used alcohol since July 8, 2017.<sup>7</sup> Tr. at 90-91, 96, 120. The Individual testified that alcohol use was interfering with his ability to make the changes he needed to address for his “mental situation.” Tr. at 113. He recognizes that if he were to begin using alcohol again, he would likely lose his career, his relationship, his home, and his happiness. Tr. at 84, 99, 103, 105, 107, 125. The Individual recognizes that his past behavior and criminal activity has hurt his reputation and cost him employment opportunities. Tr. at 117. The Individual testified that when he was drinking, getting laid off, and getting arrested, he was not able to “succeed in life” and just kept finding himself “stuck” in an increasingly “darker, lonelier” place in life. Tr. at 123-124. He believes that, if he can stay sober, he can progress in his career to a management position. Tr. at 124. The Individual expressed his remorse for lying during the PSI, stating: “I wish I had never tried to, you know, blatantly lie about how much alcohol I was using, because it only made me sound worse than it really was.” Tr. at 84

The Psychologist observed the testimony of the other witnesses before he testified. He testified that the Individual did not exhibit the core aspects of Antisocial Personality Disorder: “disregard for other people and a sense of grandiosity or of specialness about themselves.” Tr. at 132-135. The Individual did, however, meet several of the criteria for Antisocial Personality Disorder set forth in the DSM-5. Tr. at 133-135. The Psychologist testified that the Individual has gradually reformed himself and has successfully turned his life around. Tr. at 135-136. He noted that the Individual probably still has urges to use alcohol or lie, but now understands the consequences of obeying those urges and is able to control himself. Tr. at 138. When the Psychologist was asked if he had any concerns about the Individual’s truthfulness about his drinking at the hearing, the Psychologist noted two concerns: First, the Individual’s history of forging a letter from his company, and second, the Individual’s willingness to lie during the PSI. Tr. at 142. The Psychologist further noted however, that the Individual confessed that he lied at the PSI during the PSI. Tr. at 143. The Psychologist testified that, despite the fact that the Individual did not comply with his treatment recommendations, the Individual has been able to achieve reformation of his Substance Use Disorder, Alcohol, and his facets of Antisocial Personality Disorder. Tr. at 146-147, 151-155. The Psychologist further testified that the Individual’s likelihood of remaining abstinent is “very high” and his likelihood of avoiding further issues with his “characterological difficulties” is “moderate to a little higher than moderate.” Tr. at 147. However, the Psychologist further testified that the Individual’s facets of Antisocial Personality Disorder would likely continue “without being as prevalent or disruptive as there were in the past” and that the Individual would likely “catch them and stop them.” Tr. at 152.

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that she has never observed him acting impulsively or aggressively. Tr. at 39. She testified that the Individual is very good with her ten-year old daughter. Tr. at 43. She further testified that the Individual is reliable, trustworthy, and exercises good judgment. Tr. at 42-43. The Individual’s mother testified that the Individual’s girlfriend has been a steadying, maturing influence on him. Tr. at 23.

<sup>6</sup> The Individual testified that he had previously been attending Alcoholics Anonymous (AA) meetings, but stopped at the request of his girlfriend. Tr. at 85-87.

<sup>7</sup> The Individual testified that he had taken a PEth test the day before the hearing and intended to submit the results of the test into the record. Tr. at 91-94. However, the Individual did not submit the results of that test into the record.

## V. ANALYSIS

### Guideline E Concerns

The Individual has clearly exhibited questionable judgment, a lack of candor, and dishonesty when he intentionally attempted to conceal the extent and frequency of his alcohol consumption and intoxication, which brings his reliability and trustworthiness into question. The concerns raised by this intentional effort to conceal these facts are magnified by its occurrence during a PSI. *See* Guideline E at § 15 (“of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes). The concerns raised about the Individual’s judgment, trustworthiness and reliability are further magnified by the information in the record showing that the Individual forged a document in order to obtain low-income housing for which he was not eligible in May 2015.<sup>8</sup>

Guideline E sets forth a number of conditions that could mitigate security concerns. Section 17(a) provides that mitigation may result when “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification *before being confronted with the facts.*” In the present case it is clear that the Individual did not correct his omission, concealment, or falsification until after he was confronted during the PSI. Section 17(c) provides that mitigation may result when “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.” At the time of the hearing, it had been approximately eleven months since the Individual’s omission, concealment, or falsification, so it cannot be said that so much time has passed that it is unlikely to recur and does not cast doubt upon the Individual's reliability, trustworthiness, or good judgment. Section 17(d) provides that mitigation may result when “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.” The Individual has acknowledged his behaviors. However, he has only very recently begun counseling, having attended only two therapy sessions at the time of the hearing. Even though, at the hearing, the Psychologist testified that the Individual had, without the benefit of counseling, undergone changes which resulted in his reformation from both his Alcohol Use Disorder and his facets of Antisocial Personality Disorder, I am not convinced that the Individual has sufficiently mitigated the significant security concerns arising from his relatively recent omission, concealment, or falsification during the PSI. The Individual’s attempt to deceive the LSO, when considered in connection with his history of forging a document in order to wrongfully obtain low-income housing, raises grave concerns about his judgment, reliability, honesty, and trustworthiness which cannot be sufficiently mitigated by his recently improved insight and reformation.<sup>9</sup>

Accordingly, I find that the Individual has not resolved the security concerns arising from his intentional omission, concealment, or falsification during the PSI.

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<sup>8</sup> While this issue was not contained in the Statement of Security Concerns, it was part of the record in this case, and is therefore a factor in my evaluation of the Individual’s credibility.

<sup>9</sup> I note also that both the Individual’s deception during the PSI and his forgery exhibit a willingness on his part to violate rules or laws in order to obtain a desired benefit.

### **Guideline G Concerns**

At the hearing, the Individual presented compelling evidence that he has gained the insight and understanding to recognize that he has a problem with alcohol, the destructive role that alcohol has had in his life, and his need to permanently abstain from alcohol use. This testimony convinced the Psychologist that the Individual has been reformed from his Substance Disorder, Alcohol, moderate, and now has a “very high” likelihood of remaining abstinent. Accordingly, I find that the security concerns arising from the Individual’s Substance Disorder, Alcohol, moderate have been resolved.

### **Guideline I Concerns**

At the hearing, the Individual’s testimony indicated that he has gained insight into himself and an understanding of those aspects of his character which led the Psychologist to conclude that he has facets of an Antisocial Personality Disorder. More importantly, the Individual was able to show that he has been able to change his behavior. As a result, the Psychologist testified that the Individual has been able to achieve reformation of his facets of Antisocial Personality Disorder, and further testified that the Individual’s likelihood of avoiding further issues with his “characterological difficulties” is “moderate to a little higher than moderate. The Psychologist further testified that the Individual’s facets of Antisocial Personality Disorder would likely continue without being as prevalent or disruptive as there were in the past, and that the Individual would likely “catch them and stop them.”

Guideline I provides that a “recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual’s previous condition is under control or in remission and has a low probability of recurrence or exacerbation” is among those conditions that can mitigate security concerns arising under Guideline I. However, I note that the Psychologist stopped short of concluding that the risk of recurrence or exacerbation is low, explicitly stating that the Antisocial Personality Disorder would likely continue at some level. Accordingly, I find that the Individual has not resolved the security concerns arising under Guideline I from the Psychologist’s finding that the Individual has facets of Antisocial Personality Disorder.

### **Guideline J Concerns**

The Individual’s history of at least six criminal incidents between 2003 and 2013 raises significant concerns about his judgment, reliability, and trustworthiness. While this pattern appears to have been extended into 2015, when the Individual committed his forgery, the passage of time since 2015 without the recurrence of criminal activity provides some mitigation of these security concerns. *See* Guideline J at §32(d)(mitigation may occur where there is a passage of time without recurrence of criminal activity). The Individual has also provided evidence of his good employment record during the past three years, providing further mitigation of these security concerns. *See* Guideline J at § 32(d)(mitigation may occur where there is evidence of a good employment record). More importantly, each of these six criminal incidents involved alcohol, and at least five of these incidents occurred when the Individual was under the influence of alcohol, and were therefore symptomatic of his alcohol disorder. Because I have found that the Individual has been reformed from his alcohol disorder, I am now convinced that the Individual’s criminal



activity is unlikely to recur as long as he abstains from alcohol use. Guideline J at § 32(a). Accordingly, I find that the security concerns raised under Guideline J have been resolved.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E, G, I, and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the security concerns raised under Guidelines G, and J. However, the Individual has not mitigated the security concerns raised under Guidelines E and I. Accordingly, the Individual has not demonstrated that granting 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 granted. 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