

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: June 22, 2018)
)
)
_____)

Case No.: PSH-18-0050

Issued: September 13, 2018

Administrative Judge Decision

Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. On August 10, 2017, the Individual completed a personnel security information report disclosing that a court had issued a temporary protection order against him in relation to a July 2017 incident involving his ex-wife. DOE Ex. 9. As part of its evaluation of the Individual’s eligibility to retain his security clearance, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) in October 2017. DOE Ex. 13. Based upon information provided during the PSI, DOE requested a psychological evaluation of the Individual. DOE Ex. 5. A DOE-consultant psychologist (DOE Psychologist) conducted an evaluation of the Individual in December 2017 and submitted a report of her assessment (Psychological Evaluation). DOE Ex. 10.

As the PSI and Psychological Evaluation raised unresolved security concerns, the LSO informed the Individual, in a letter dated April 12, 2018 (Notification Letter), that it possessed reliable

¹ The regulations define access authorization as “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). This Decision will refer to such authorization as access authorization or security clearance.

information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption), Guideline I (Psychological Conditions), and Guideline J (Criminal Conduct). DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO introduced 14 exhibits (DOE Ex. 1-14) into the record and presented the testimony of the DOE Psychologist. The Individual introduced four exhibits (Individual Ex. 1-4) into the record and presented the testimony of seven witnesses, including himself. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines G, I, and J of the Adjudicative Guidelines. DOE Ex. 1.

The LSO cited Guideline G as one of the bases for suspending the Individual's security clearance. DOE Ex. 1 at 1. 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. The Notification Letter asserted that: (1) the Individual was charged with Driving Under the Influence (DUI) on two occasions in the 1990s; (2) the Individual self-reported drinking to intoxication on a weekly basis from 2012 until the date of the PSI; (3) the Individual admitted to engaging in a physical altercation with his ex-wife, her son, and her prior ex-husband after consuming alcohol; and (4) the DOE Psychologist determined that the Individual consumed alcohol habitually and was a binge drinker to the point of impaired judgement, meeting the criteria for a diagnosis of Unspecified Alcohol-Related Disorder in Early Remission, without adequate evidence of rehabilitation or reformation, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The Individual's alcohol-related incidents away from work and the DOE Psychologist's conclusions about the Individual's drinking habits and diagnosis justify the LSO's invocation of Guideline G. Guideline G at ¶ 22(a), (c)-(d).

Guideline I concerns certain emotional, mental, and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. In invoking Guideline I, the Notification Letter indicated that the DOE Psychologist concluded that the Individual's stalking behaviors, poorly reasoned justifications for his actions, loss of emotional and behavioral control, and lack of self-awareness and candor comprise an emotional and personality condition that may impair his judgment, stability, reliability, and trustworthiness. DOE Ex. 1 at 2. The DOE Psychologist's opinion that the Individual has a condition that may impair his judgment, reliability, and trustworthiness justifies the LSO's invocation of Guideline I in the Notification Letter. Guideline I at ¶ 28(b).

Lastly, the LSO also cited Guideline J in suspending the Individual's security clearance. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Guideline J at ¶ 30. By its very nature, criminal conduct calls into question a person's ability or willingness to comply with laws, rules, and regulations. *Id.* The Notification Letter listed two DUI charges, the Individual's admission to driving while intoxicated, and the Individual's confirmation of his involvement in a physical altercation that resulted in the issuance of a temporary order of protection against him. DOE Ex. 1 at 2. The numerous instances of admitted criminal conduct cited by the LSO in the Notification Letter, including those that did not result in the Individual being charged with a crime, justify the LSO's invocation of Guideline J. Guideline J at ¶ 31(a)-(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The 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.

IV. FINDINGS OF FACT

The Individual began drinking as a youth, and was charged with DUI while in high school. DOE Ex. 13 at 98, 103, 145. The Individual was charged with a second DUI while in college. *Id.* at 103, 105. According to the Individual, he has driven a vehicle while "buzzed" approximately 30 to 40 times in his life. *Id.* at 136. The Individual significantly reduced his drinking in the late 1990s, but returned to heavy drinking after the end of a relationship in the early 2000s. *Id.* at 113-119. The Individual admitted to driving while intoxicated on several occasions between 2001 and 2012. *Id.* at 120. Beginning in 2012, the Individual reported that he reduced his drinking, but continued to drink to intoxication approximately once per week. *Id.* at 121-123. The Individual estimated that he has driven while intoxicated on approximately two occasions between 2012 and the date of the PSI. *Id.* at 123.

Pursuant to a September 2017 stipulated order of protection, the Individual attended court-ordered counseling. DOE Ex. 8 at 4. The Individual began this counseling several weeks prior to the PSI. DOE Ex. 13 at 138. During the PSI, the Individual reported that he did not perceive himself as an alcoholic or alcohol dependent, and that he intended to “not overdo [alcohol or] drink and drive” in the future. *Id.* at 141-142.

The Individual married his now ex-wife in 2014, and had a daughter soon thereafter. DOE Ex. 10 at 2; *see also* DOE Ex. 13 at 11. The Individual and his ex-wife were involved in several physical altercations during their relationship. The Individual attributed the physical altercations to his ex-wife’s “short fuse,” which he claimed led to attacks from which he was required to defend himself. DOE Ex. 13 at 42. On one occasion, the Individual “grabbed [his ex-wife] and threw her to the floor” because she was drunk and “want[ed] to take off with [their daughter].” *Id.* at 43. The Individual’s ex-wife was married prior to marrying the Individual, and has two sons from that relationship. *Id.* at 10-12. The Individual stated during the PSI that the older son was “probably the real reason for [the Individual’s] and [his ex-wife’s] problems.” *Id.* at 14. According to the Individual, his relationship with the sons was a source of tension in the household. *Id.* at 25-26.

The Individual also stated during the PSI that he and his ex-wife separated after their first year of marriage, but maintained an intimate relationship for several years thereafter before divorcing in June 2017. *Id.* at 10, 30-31. The Individual reported feeling his ex-wife was concealing her relationships with other men from him. *Id.* at 86. Due to his suspicions, the Individual stated that he took his ex-wife’s cell phone from her to inspect her social media activity because she refused to let him do so voluntarily and “it looked like she was deleting stuff . . .” *Id.* at 48.

In July 2017, a court ordered the Individual to avoid contact with his ex-wife, except as it pertains to their daughter, following a physical altercation that month involving the Individual, his ex-wife, her oldest son, and her prior ex-husband. DOE Exs. 7-9. The Individual reported during the PSI that, prior to the altercation, he and his ex-wife had not spoken in several weeks and that he had a “gut feeling that she was probably seeing someone else.” DOE Ex. 13 at 10. On the afternoon of the altercation, the Individual consumed several beers. *Id.* at 35-36; *see also* DOE Ex. 10 at 5. The Individual drove to his ex-wife’s home that evening and knocked on her door because he “wanted the truth from her, what’s going on . . .” DOE Ex. 13 at 12; *see also* DOE Ex. 10 at 5. According to the Individual, after he and his ex-wife talked on the porch, she went inside and her ex-husband and two minor sons arrived. DOE Ex. 13 at 12-13. The Individual claimed that he tried to leave, but that the older son confronted him while he was in his car, and the Individual “got bothered” and exited the vehicle. *Id.* at 14. An argument ensued with the Individual threatening the older son and ex-husband. *Id.* at 50. The Individual stated that he perceived the ex-husband was “gonna fight,” so he kicked the ex-husband, claiming that doing so was self-defense. *Id.* at 14, 90. Thereafter, the Individual’s ex-wife and her oldest son became involved in the altercation, and the Individual sustained injuries that required medical treatment. *Id.* at 15-18. According to the Individual, the hospital tested his blood and did not measure any alcohol. *Id.* at 37.² The Individual stated during the PSI that, after this incident, he did not intend to reconcile with his ex-wife, and that he views his romantic relationship with her as “dead.” *Id.* at 81.

² In her report, the DOE Psychologist estimated that the Individual drank to intoxication that afternoon, but had metabolized all of the alcohol by the time that his blood was tested at the hospital. DOE Ex. 10 at 5-6.

The Individual's ex-wife alleged in her petition for an order of protection that the Individual had stalked her. DOE Ex. 9 at 7. According to the Individual, he would "go to [his ex-wife's] house every once in a while," but did not believe that he was stalking her. DOE Ex. 13 at 40. The Individual also admitted to going to the home of his ex-wife's parents when she lived with them to observe her activity. *Id.* at 84-85. At the time of the July 2017 altercation, the Individual had a pair of binoculars in his vehicle, which he represented that he kept there for viewing wildlife. *Id.* at 41.

During the Psychological Evaluation, the Individual discussed the altercation. The Individual admitted that he had used the binoculars in his car to see who was in his ex-wife's home on the night of the altercation in an effort to verify his suspicions. DOE Ex. 10 at 4. He also acknowledged that his efforts to "verify" his ex-wife's activities, both on the night of the altercation and before, made his ex-wife "uncomfortable." *Id.* However, the DOE Psychologist deemed some of the Individual's responses to be efforts to rationalize his behavior and depict himself as a wronged party. *Id.* at 6. The DOE Psychologist administered a Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF) examination to the Individual. *Id.* at 6. While the results of the MMPI-2-RF showed the Individual as psychologically well-adjusted, without elevation on any of the clinical scales, the DOE Psychologist considered these results to be consistent with the Individual's efforts to portray himself as a reasonable person and therefore determined that the MMPI-2-RF results "cannot be reliably interpreted as accurately measuring [the Individual's] emotional, psychological, and behavioral functioning." *Id.*

The DOE Psychologist concluded that the Individual's stalking behaviors, poorly reasoned justifications for his actions, loss of emotional and behavioral control, and lack of self-awareness established that he had an emotional, mental, or personality condition that may impair his judgment, stability, reliability, and trustworthiness. *Id.* at 8. The DOE Psychologist reported that the Individual's prognosis would depend on his participation in counseling to address those issues. *Id.*

The DOE Psychologist also evaluated the Individual's drinking habits. During the Psychological Evaluation, the Individual reported drinking two to three 16-20 ounce beers once per week, which differed from his account during the PSI that he would drink approximately four beers. *Id.* at 5. The DOE Psychologist inferred that the Individual was drinking a greater volume of beer than he previously disclosed during the PSI.³ *Id.* The Individual told the DOE Psychologist that he quit drinking approximately two months before the Psychological Evaluation. *Id.* at 6. The Individual provided biological specimens, which the DOE Psychologist sent to a laboratory for a Phosphatidylethanol (PEth) test. *Id.* at 7. The PEth test results were negative, supporting the Individual's claims about abstaining from alcohol. *Id.*

The DOE Psychologist concluded that the Individual's accounts of his drinking habits revealed that he had consumed alcohol habitually and was binge drinking on a weekly basis to the point of impaired judgement until approximately two months prior to the Psychological Evaluation, and

³ The DOE Psychologist's internet research led her to conclude that the brand of beer the Individual reported drinking is sold in non-standard sizes, and she assumed that he consumed the larger 25.4-ounce size. DOE Ex. 10 at 6. Testimony from the Individual's ex-wife during the hearing supports the DOE Psychologist's conclusions. *See infra* p. 6.

that this short period of abstinence did not establish the Individual's rehabilitation or reformation. *Id.* at 8. Therefore, the DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder in Early Remission. *Id.* The DOE Psychologist recommended that the Individual meet weekly with a therapist for at least six months, and that the Individual submit to random alcohol testing to verify his abstinence from drinking during treatment. *Id.*

At the hearing, the Individual's ex-wife testified that she had concerns about the Individual's drinking during their marriage. Tr. at 12-13. According to his ex-wife, the Individual drank one or two of the "big Foster's" cans, which she estimated as 25 ounces, on weekends and special occasions. *Id.* at 13-16. The Individual's wife testified to feeling unsafe with the Individual when they would argue about his suspicions about her fidelity. *Id.* at 17.

The Individual's ex-wife and his brother both testified that they had not seen the Individual drink since 2017. *Id.* at 13-14, 38. The Individual's ex-wife stated that communication was much better between herself and the Individual, that they were able to express disagreement with each other without engaging in heated arguments, and that she believed that the Individual intended to refrain from consuming alcohol in the future. *Id.* at 21. The Individual's brother testified that he had recently seen the Individual refuse alcohol in social settings. *Id.* at 39-40. The Individual's brother also testified that the Individual seemed more focused since he stopped drinking. *Id.* at 39.

The Individual also offered the testimony of a licensed professional counselor (Individual's Counselor) who began treating him in May 2018. *Id.* at 49. The Individual's Counselor testified that he did not disagree with the DOE Psychologist's diagnosis of the Individual. *Id.* at 52. The Individual's Counselor developed a six-month treatment plan for the Individual that focuses on the Individual's alcohol consumption and anger. *Id.* at 51. From the beginning of their counseling relationship, the Individual's Counselor has recommended that the Individual not drink. *Id.* at 50. As of the hearing date, the Individual had attended eight counseling sessions.⁴ The Individual's Counselor noted that the Individual missed some counseling sessions due to undergoing knee surgery. *Id.* at 54. As part of his treatment, the Individual took PEth tests on May 22nd, July 16th, and July 25th. *Id.* at 81.

The Individual's Counselor believes that the Individual abstained from alcohol from October 2017 to June 2018. *Id.* at 51. In June, the Individual reported to his counselor that he had consumed alcohol while on a date. *Id.* at 50. The Individual later tested positive for alcohol on the July 16th PEth test, which the Individual's Counselor attributed to the Individual's June relapse. *Id.* at 50-51. The Individual's Counselor testified that the Individual tested negative for alcohol on the other two PEth tests, and he believes that the Individual has not consumed any alcohol, besides the relapse in June, since October 2017. *Id.* at 50-51, 55.

The Individual testified that he did not contest the LSO's assertions in the Notification Letter, except that he believed that he over reported his alcohol consumption in the PSI. *Id.* at 71. The Individual testified that his counseling has taught him techniques to control his anger, to accept responsibility for his actions, and to avoid drinking. *Id.* at 73, 75-76. The Individual also testified

⁴ The Individual attended counseling sessions on the following dates: May 8th, May 23rd, May 29th, June 13th, July 11th, July 25th, August 1st, and August 8th. Tr. at 49.

that he participated in a court-ordered anger-management course. *Id.* at 73-74. The Individual acknowledged his stalking behavior and testified that it was not appropriate. *Id.* at 76-77.

The Individual testified to drinking three beers in June on a date because he “figured there was a certain level that shows up and doesn’t show up” on the PEth tests. *Id.* at 82. The Individual represented that he has not consumed alcohol, except for the date in June, since October 2017. *Id.* at 72. The Individual testified that he intends to abstain from alcohol in the future because of the professional and personal problems drinking has caused him. *Id.* at 73, 83.

The DOE Psychologist, after observing the entirety of the hearing, testified that her opinion was that the Individual was rehabilitated from his Unspecified Alcohol-Related Disorder and no longer demonstrated an emotional and personality condition. *Id.* at 93-94. The DOE Psychologist acknowledged the Individual’s relapse in June, but testified that it was not dispositive of her diagnosis. *Id.* at 93. Instead, she testified that the Individual’s honesty in disclosing his relapse to the Individual’s Counselor and his new attitude with respect to alcohol convinced her that he does not have an Alcohol-Related Disorder. *Id.* As to her diagnosis of the Individual as suffering from an emotional and personality condition, the DOE Psychologist stated that the Individual’s newfound attitude with respect to his anger, the coping skills he developed through counseling, and his admission as to the wrongfulness of stalking convinced her that he had resolved that concern. *Id.* at 93-94. The DOE Psychologist further testified that the Individual’s prognosis was good with respect to his alcohol consumption and his psychological wellbeing. *Id.* at 94.

After the hearing, the Individual submitted a letter from a counselor with his employer’s Employee Assistance Program, which stated that the Individual attended six sessions of alcohol counseling, which included anger management strategies. Individual’s Ex. 5. The letter stated that during these sessions, the Individual was “attentive and cooperative and learned a great deal about self-regulation, communication and problem solving.” *Id.*

V. ANALYSIS

A. Guideline G

The DOE Psychologist testified during the hearing that she believed that the Individual was rehabilitated from his Unspecified Alcohol-Related Disorder, and that the Individual’s prognosis for avoiding problem drinking in the future was positive. Tr. at 93-94. Administrative Judges afford significant deference to the expert opinion of DOE psychologists in Part 710 hearings; however, Administrative Judges are not bound to defer to experts where the common-sense application of judgement to the facts produces conclusions contrary to those recommended by experts. *See Personnel Security Hearing*, OHA Case No. TSO-0728 at 7-8 (2009).⁵ Moreover, the July 2017 altercation, because it occurred after the Individual had been drinking, also raises a separate security concern under Guideline G. Guideline G at ¶ 22(a). For the reasons set forth below, I find that the Individual has not mitigated the security concerns asserted by the LSO under Guideline G.

⁵ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

An individual may mitigate security concerns under Guideline G if “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Guideline G at ¶ 23(a). In this case, the Individual consumed alcohol less than two months prior to the hearing, against the recommendation of the DOE Psychologist and the Individual’s Counselor. Moreover, the Individual admitted during the hearing that he considered the consequences of consuming alcohol before drinking, but did so anyway because he believed that PEth tests would not detect low levels of alcohol consumption. Tr. at 82. Not only has the Individual recently consumed alcohol, but the circumstances under which he did so reflect poor judgement. Accordingly, I find this mitigating factor inapplicable.

An individual may also mitigate security concerns under Guideline G if “the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence [] or responsible use [].” *Id.* at ¶ 23(b). Although the DOE Psychologist credited the Individual for disclosing his June relapse to his counselor, for sobriety from October to June, and for his improved attitude towards alcohol, I am not convinced as to the sufficiency of the Individual’s actions to overcome his drinking problem. The Individual’s testimony as to the circumstances of his June relapse cause me to question whether he will continue to abstain from alcohol without the external control exerted by the PEth tests. For these reasons, I do not find this mitigating factor applicable to the Individual.

The remaining mitigating factors under Guideline G are inapplicable in this case because the Individual has not yet completed his counseling, and he relapsed during the course of treatment. *See* Guideline G at ¶ 23(c)-(d). Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline I

The Individual did not contest any of the LSO’s assertions in the Notification Letter with respect to Guideline I. Tr. at 71. However, the Individual offered testimony to the effect that he no longer believed his stalking behavior was justified and that his counseling helped him manage his anger. As discussed below, two of the mitigating factors under Guideline I are applicable in this case, and I therefore find that the Individual has resolved the related security concerns.

An individual may mitigate security concerns under Guideline I if “the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability,” and if “there is no indication of a current problem.” Guideline I at ¶ 29(d)-(e). The DOE Psychologist primarily based her determination that the Individual suffered from an emotional, mental, or personality condition that impaired his judgement, reliability, or trustworthiness on the Individual’s jealousy and suspicion concerning his ex-wife, which resulted in the Individual displaying a loss of emotional and behavioral control and irrational justifications for his stalking behavior. DOE Ex. 10 at 7-8. The Individual’s actions, which informed the DOE Psychologist’s diagnosis, were connected to the breakup of his marriage, and the Individual has acknowledged that he acted inappropriately. The Individual’s ex-wife was very positive when testifying about the Individual’s improved ability to control his anger in his interactions with her. I find the ex-wife’s

testimony with respect to the Guideline I security concerns persuasive because of her personal knowledge of the Individual's behavior towards her. After listening to all of the testimony, the DOE Psychologist testified that she believes that the Individual's prognosis is good.

In light of the connection between the Individual's emotional instability and the breakup of his relationship with his ex-wife, the Individual's account of his changed mental status, the positive testimony of his ex-wife, the opinion of the DOE Psychologist that the Individual does not demonstrate symptoms of a current problem, and the fact that nothing in the record shows that the Individual has lost control of his anger or returned to stalking behavior since the July 2017 altercation, I find that the Individual has met the criteria for mitigation set forth at ¶ 29(d)-(e) of the Guidelines. Accordingly, I find that he has resolved the security concerns asserted by the LSO under Guideline I.

C. Guideline J

The Individual did not dispute any of the allegations set forth in the Notification Letter concerning Guideline J. Tr. at 71. However, the Individual testified as to his improved ability to manage his anger and new attitude towards alcohol consumption to establish that he was unlikely to drive while impaired or engage in physical violence in the future. For the reasons set forth below, I find that the Individual has not mitigated the Guideline J security concerns.

An individual may mitigate security concerns under Guideline J if "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." Guideline J at ¶ 32(a). In prior decisions, OHA has not found this mitigating factor applicable unless several years have passed since the criminal conduct in question. *See Personnel Security Hearing*, OHA Case No. TSO-0956 (2010) (denying the restoration of an individual's clearance because the individual engaged in shoplifting within one year of the hearing); *see also Personnel Security Hearing*, OHA Case No. PSH-17-0066 (2017) (finding that the passage of approximately two years since an individual exited his vehicle and threatened another person with a tire iron in a driving-related altercation was inadequate to mitigate security concerns under Guideline J). OHA considers the seriousness of the conduct in question when evaluating the appropriate passage of time to mitigate security concerns. *See Personnel Security Hearing*, OHA Case No. PSH-12-0099 (2012) (finding the passage of two years since an individual's traffic-related offense was adequate to mitigate security concerns under Guideline J).

The Individual's misconduct in the July 2017 altercation was serious and indicative of extremely poor judgement. Furthermore, the Individual admitted to driving while intoxicated within the recent past.⁶ In light of the seriousness of the conduct in question, and the short period of time that has elapsed since the Individual committed the misconduct, I conclude that the mitigating factor set forth at paragraph 32(a) of Guideline J is inapplicable in this case. I further conclude that the remaining mitigating factors under Guideline J are inapplicable as the Individual does not dispute that he engaged in the criminal conduct or assert that anyone coerced him into committing the offenses. *See* Guideline J at ¶ 32(b)-(c). Furthermore, the Individual has also not completed his

⁶ During the PSI, the Individual speculated, but could not confirm, that the last time that he drove while intoxicated was "probably" before the July 2017 altercation. DOE Ex. 13 at 124.

alcohol-related treatment plan and therefore cannot yet demonstrate successful rehabilitation as it concerns his alcohol consumption. *Id.* at ¶ 32(d) Since the Individual has not satisfied the criteria for any of the mitigating factors, I find that he has not resolved the security concerns asserted by the LSO under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines G, I, and J of the Adjudicatory Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has resolved the security concerns asserted in the Notification Letter under Guideline I, but has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter under Guidelines G and J. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Brooke A. DuBois
Administrative Judge
Office of Hearings and Appeals