

to resolve the substantial doubt regarding his eligibility to hold 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 November 19, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, two of the Individual's friends, a coworker who also had been his former supervisor, the Individual's spouse, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-20-0011 (hereinafter cited as "Tr."). The LSO submitted 18 exhibits, marked as Exhibits 1 through 18 (hereinafter cited as "Ex."). The Individual submitted two exhibits, marked as Exhibits A and B.

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 Guideline(s) G 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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Under Guideline G (Alcohol Consumption), the LSO alleged that the Psychologist concluded that the Individual is a habitual consumer of alcohol to a level of intoxication that can impair his judgment. Ex. 1 at 1. The LSO further alleged that the Individual has a history of four alcohol-related arrests involving charges for driving while intoxicated (DWI) or driving under the influence (DUI).² Ex. 1 at 1-2. 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," and "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." Guideline G at §§ 22(a) and (c). Given the Individual's history of alcohol related arrests and the Psychologist's opinion, the LSO's security concerns under Guideline G are justified.

Under Guideline J (Criminal Conduct), the LSO cites the Individual's history of nine arrests. 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. The Individual's history of criminal activity adequately justifies the LSO's invocation of Guideline J.

² The Individual admitted using alcohol prior to the incident which resulted in his September 7, 2009, arrest for Battery.

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines §2(a). The protection of the national security is the paramount consideration. 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.

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 nine arrests, beginning on June 24, 2000, when he was arrested and charged with Assault on Household Member and Unlawful Taking of a Vehicle.³ *See* Ex. 1 at 3; Ex. 6 at 4; Ex. 9 at 49-50.

On July 20, 2001, the Individual was arrested and charged with aggravated DWI. Ex. 10 at 63. The DOE counsel submitted post-hearing court records which reflected that the charges were dismissed. Ex. 14.

In January 2004, police arrested the Individual and charged him with DUI. Ex. 6 at 3. In his Response to LOI, he stated he was a passenger in a truck operated by its owner when the owner lost control of the truck and hit a car. The Individual further asserted that the owner then fled the scene on foot. Ex. 6 at 3. The Individual reported that he remained at the scene and was arrested by the police. He further claimed that the charges were dismissed, however this assertion is unsupported in the record.

³ While the Individual claimed that the charges were dismissed, there is no evidence in the record supporting this contention. Ex. 6 at 2.

On March 6, 2004, police arrested the Individual after a domestic violence incident.⁴ Ex. 6 at 3. As a result of this incident, a court issued an emergency restraining order against him. Ex. 6 at 3. In his Response to the LOI, the Individual claimed that this arrest occurred when his girlfriend contacted the police during an argument with him. Ex. 6 at 3. He further admitted to violating the terms of the emergency restraining order when he returned to his residence to get his clothes. Ex. 6 at 3. .

On February 11, 2006, police arrested the Individual and charged him with DWI. Ex. 10 at 69. This charge was ultimately dismissed by the State, who indicated that the prosecution was “Unable to Proceed.” Ex. 12.

On January 20, 2009, police arrested the Individual and charged him with Trafficking Controlled Substances (Distribution), two counts of Possession of a Controlled Substance (Felony), and Tampering with Evidence – Attempt (Highest Crime a Capital, First or Second Degree Felony). Ex. 10 at 64-65; Ex. 6 at 1. In his Response to the LOI, the Individual claimed that police filed these charges against him after they found illegal drugs in his home and vehicle. Ex. 6 at 1. The Individual claimed that the illegal drugs belonged to his roommate and that he had no knowledge of his roommate’s illegal activity. Ex. 10 at 65; Ex. 6 at 1. The Individual reported that he completed 18 months of probation, received a deferred sentence, had his rights reinstated, and the charges were ultimately dropped.⁵ Ex. 6 at 1.

On September 7, 2009, police arrested the Individual and charged him with DUI.⁶ Ex. 6 at 1; Ex. 10 at 66.

On November 3, 2014, police arrested the Individual and charged him with DUI.⁷ Ex. 6 at 1; Ex. 10 at 59. In his Response to the LOI, the Individual claimed that the police found him sleeping in his vehicle with the keys in his car’s ignition, and arrested him. Ex. 6 at 1.

On May 25, 2016, police arrested the Individual and charged him with Aggravated Battery (Great Bodily Harm) and Conspiracy.⁸ Ex. 6 at 1; Ex. 10 at 60. In the Individual’s Response to the LOI,

⁴ The charges arising from this incident were ultimately dismissed. Ex. 15.

⁵ The Individual submitted an Order of Dismissal on Deferred Sentence dated May 16, 2012, which states that regarding the Individual’s conviction on January 20, 2009, for possession of a controlled substance, the Court’s period of deferred sentencing expired on May 14, 2012. Ex. A. The Individual was relieved of any obligations imposed on him and has satisfied criminal liability for the crime, this cause is dismissed, and Individual is eligible for restoration of voting rights. Ex. A. In addition, the DOE Counsel submitted a post-hearing court record which reflected the disposition for charges of trafficking of a controlled substance, possession of a controlled substance, and tampering with evidence were converted to nolle prosequi on March 30, 2009, and a Conspiracy Charge was dismissed on January 21, 2009. Ex. 13; Ex. A.

⁶ This charge was ultimately dismissed by the prosecution. Ex. 17.

⁷ This charge was ultimately dismissed because the arresting officer failed to appear. Ex. 16.

⁸ The Individual submitted a letter from his Public Defender dated September 6, 2017, indicating that the state has withdrawn its prosecution of the case, and the case is dismissed “nolle prosequi, and further stating that “although the state is not prosecuting at this time, they still have within the statute of limitations period (five years) to charge the Individual with this case if he gets into any other trouble with the law.” Ex. B. The dismissal referenced in the letter

he claims that this arrest resulted from an incident in which his friend attacked him while they were consuming alcohol at his residence. Ex. 6 at 1.

The Psychologist conducted a clinical interview (CI) of the Individual on April 15, 2019, and issued his Psychological Assessment Report (Report) on April 25, 2019. Ex. 7. In the Report, the Psychologist found that the Individual's self-reported alcohol usage patterns indicated that the Individual likely becomes intoxicated on a monthly basis and that this pattern can be considered binge drinking. Ex. 7 at 6. The Psychologist concluded that the Individual "is a habitual consumer of alcohol to a level of intoxication that can impair his judgment." Ex. 7 at 7. The Psychologist also articulated his concern that the Individual was underreporting his alcohol usage, noting that the Individual revised his initial report of his recent alcohol consumption immediately after being informed that the Psychologist was sending him for laboratory testing to evaluate his alcohol consumption.⁹ Ex. 7 at 6. In the Report, he Psychologist further concluded that the Individual "is a habitual consumer of alcohol to a level of intoxication that can impair his judgment."¹⁰ Ex. 7 at 7. The Psychologist recommended that the Individual abstain from consuming alcohol for at least six months in order to demonstrate that he can control his alcohol consumption. Ex. 7 at 7. The Psychologist also recommended the Individual actively participate in Alcoholics Anonymous (AA) meetings for a period of six-months or enter a four-week intensive outpatient program that meets four nights a week and has both group and educational components.¹¹ Ex. 7 at 7.

The Hearing

The Individual's spouse testified that she last saw the Individual use alcohol on January 1, 2020, when he consumed about four beers. Tr. at 59. She testified the Individual did not appear to be intoxicated that night. Tr. at 59 She also recounted the Individual's arrest for battery on a

is consistent with Exhibit 11 submitted by DOE Counsel which stated the "state dismis[s]e[d] the matter to further investigate and attempt to apprehend the co-defendant who has pertinent information."

⁹ The Psychologist ordered two alcohol tests for the Individual: an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test. Ex. 7 at 5. The EtG test result showed that the Individual had consumed alcohol in the three days prior to the interview with the Psychologist. Ex. 7 at 5. The PEth test was positive at a level of 208 ng/mL, which the Psychologist claimed is consistent with heavy alcohol consumption. Ex. 7 at 5. The Report stated that the Individual's PEth level could be four drinks a day several days a week, and that "[t]his is also congruent with a level that is considered overconsumption of alcohol." Ex. 7 at 5. The Psychologist opined that these laboratory test results indicate that the Individual "has been consuming a significant amount of alcohol." Ex. 7 at 6.

¹⁰ The Psychologist further concluded that the Individual's "reliability and trustworthiness are compromised by his attempting to obscure the level of his consumption." Ex. 7 at 7. The Psychologist's valid concerns about the Individual's honesty raise security concerns under Guideline E Personal Conduct. See Guideline E at § 15(b) (Stating that a "refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination will normally result . . . in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility.") The Notification Letter does not cite any concerns under Guideline E, however.

¹¹ The Psychologist also recommended that the Individual's abstinence should be documented by having at least two negative PEth tests over a six month period. Ex. 7 at 7.

household member in 2009. Tr. at 65–67. The Individual’s spouse testified that a friend of the Individual’s became involved in an altercation with his girlfriend, at the Individual’s home. This altercation resulted in the neighbors calling the police. Tr. at 66. The combatants then left the Individual’s house, and when the police arrived, they mistakenly believed that the Individual and his wife were the people that had been arguing, so they arrested the Individual. Tr. at 65, 67. The spouse testified that she did not think the Individual had a problem with alcohol. Tr. at 60–61. When asked about any rehabilitative efforts that the Individual had undertaken with regard to his alcohol use, the spouse testified that she believes he attended a small number of AA meetings during the previous year, but she knew of no other rehabilitative efforts. Tr. at 64. She stated she does not know why the Individual stopped attending AA meetings. Tr. at 64. She also testified that the Individual told her that he was “probably going to stop drinking” as a New Year’s resolution. Tr. at 65.

The Individual’s coworker, who had been his former supervisor, testified he has not been aware of any issues that the Individual has with alcohol and he has never been concerned with the Individual’s alcohol consumption. Tr. at 38. He testified that he sees the Individual five days a week, but has never seen him in a social setting outside of work. Tr. at 37. He further testified that he believes the Individual is an honest person and is reliable. Tr. at 39–40.

The Individual’s friend testified that he has known the Individual for over 30 years and currently sees him two times per month for social occasions. Tr. at 20–21. He stated the last time he saw the Individual consume alcohol was approximately six months to a year ago. Tr. at 22. The Individual’s friend does not believe the Individual has a problem with alcohol. Tr. at 25. The Individual’s friend also testified that in September 2019, the Individual told him that he “would like to be able to not drink, but I always enjoy, you know, a beer her and there, and then he laughed.” Tr. at 23.

A second friend of the Individual (the second friend) testified that he has known the Individual since he was a child, and that he currently sees him twice a week and on weekends when the Individual visits him and does household repairs and maintenance projects for him as a handyman. Tr. at 46-47, 52. The second friend testified that he last saw the Individual consume alcohol on New Year’s, when he saw the Individual consume two beers. Tr. at 47–48. He testified that he does not believe the Individual has an alcohol problem because “he doesn’t drink that much to have an alcohol problem” although he also testified that he does not know what the Individual’s alcohol patterns are during the time he does not spend with the Individual. Tr. at 48–49.

The Individual testified that his last use of alcohol occurred on January 1, 2020, fourteen days prior to the hearing, when he consumed four or five beers over a four or five-hour period. Tr. at 73. He does not believe he has a problem with alcohol. Tr. at 72, 74. However, he acknowledged that alcohol created a problem when it resulted in him drinking and driving, but contended that it is no longer a problem, since he no longer drinks and drives. Tr. at 72–73. The Individual testified that he had not attended AA or a treatment program, even after receiving the Psychologist’s Report. Tr. at 85-86. The Individual testified that he had not attended AA or a treatment program because he was advised to wait before enrolling in these programs by an Employer Assistance Program (EAP) staff member. Tr. at 85–86.

The Individual did not contest the arrests and charges listed in the Summary of Security Concerns, however, in testifying to his account of those arrests, he rarely took responsibility for any of the arrests. For example, regarding his arrest on September 7, 2009, he stated that he was arrested for battery on a household member because the police mistakenly believed that he and his wife were the people arguing, even though it was his friend who had been arguing with his friend's girlfriend.¹² Tr. at 94–95. The Individual also testified that his January 20, 2009, arrest for Trafficking Controlled Substances, Possession of a Controlled Substance, and Tampering with Evidence occurred because his roommate was using the Individual's truck to sell drugs and was storing the illegal drugs in the Individual's home (albeit in the roommate's bedroom). Tr. at 95–96. The Individual stated he had no knowledge of his roommate's illegal activities. Tr. at 96. The Individual testified that, even though he was innocent of the charges, his attorney advised him to plead no contest for possession of a controlled substance rather than taking the risk of going to trial and losing, which could have resulted in a prison sentence of 13 years. Tr. at 98–99.¹³

Similar to the above incidents where the Individual testified that his arrests were caused by the actions of others, the Individual testified to two prior incidents involving domestic violence in March 2004 and June 2000, respectively. The Individual testified that in March 2004, he was arguing with this girlfriend and she called the police who arrested him even though he had not hit her. Tr. at 101–102. He asserted that this arrest occurred because “[a]ll a person has to say is ‘I’m afraid of him,’ and they’ll arrest you for domestic violence.” Tr. at 102.

During the Individual's testimony he provided the following account of the incident that led to his June 24, 2000, arrest for Assault on a Household Member and Unlawful Taking of Vehicle:

We were driving, and she was accusing me of cheating on her. . . . I said "Well, pull over, let me out, you know." So I got out of the vehicle, I started walking, and . . . she tried to hit me with the vehicle, and I got out of the way. . . . You know, we were arguing and stuff. And the cops came. They were saying . . . that I was trying to take the vehicle. And I was like "That's my vehicle that she's driving, you know." They was -- they were trying to get me for unlawful taking of a motor vehicle or something like that.

Tr. at 106. Previously, in his Response to the LOI, the Individual claimed that these charges arose from an incident in which police observed the Individual and his girlfriend arguing in public. The Individual further claimed in his Response that this argument ensued after his girlfriend attempted to steal his truck. Ex. 6 at 2.

¹² When questioned about this incident during the hearing, the Individual admitted that he had been drinking “a few beers” during the incident. Tr. at 111.

¹³ The Individual submitted an Order of Dismissal on Deferred Sentence, dated May 16, 2012, which in which the state court held that that he was relieved of any obligations imposed on him and has satisfied criminal liability for the crime, this cause is dismissed, and that the Individual is eligible for restoration of voting rights. Ex. A. In addition, the DOE Counsel submitted a post-hearing court record which reflected the disposition for charges of trafficking of a controlled substance, possession of a controlled substance, and tampering with evidence were converted to nolle prosequi on March 30, 2009. Ex. 13 A.

Regarding his November 3, 2014, DUI arrest, the Individual testified that he had two or three beers over four or five hours, and then fell asleep at a red light, when a police officer arrived and smelled alcohol on his breath. Tr. at 91–92. The Individual asserted that he passed the field sobriety test but the officer still arrested him for DUI. Tr. at 92. He testified that the charges were dismissed.¹⁴ Tr. at 92.

During his hearing testimony, the Individual admitted that he initially underreported the amount of alcohol he consumed during his clinical interview with the Psychologist, and that he would not have disclosed the actual amount of alcohol he was consuming if the Psychologist had not told him he was going to send him for a test. Tr. at 82.

After observing the testimony of each of the other witnesses, the Psychologist confirmed his conclusion from the Report that the Individual is “a habitual consumer of alcohol to the level of intoxication and that can impair his judgment.” Tr. at 116. He based this conclusion on the Individual’s self-report of his alcohol consumption of “eight to ten, maybe eight to nine alcoholic drinks on a weekend, maybe once or twice a month that would bring him into a serious level of intoxication...about .11 or .12 over the time he gave me.” Tr. at 117. The Psychologist testified that he believes that the Individual currently drinks “to a legal intoxication, probably weekly, on weekends, maybe every other weekend, but there is also once or twice a month...that he would drink very significantly, even with light beer...” Tr. at 125. The Psychologist testified that his conclusion is supported by a combination of the clinical interview and is supported by the PEth test results. *Id.*

The Psychologist testified that the treatment recommendations set forth in the Report, which include six months of AA or four weeks of an outpatient program were based on his opinion that the Individual would not be able to sustain those recommendations for a longer period. Tr. at 118–119. However, the Psychologist testified that he realized that his previous recommendation was “an error in my judgment”, and his recommendation would now be 12 months.¹⁵ Tr. at 119. Regarding rehabilitation, the Psychologist opined that he does not believe the Individual “has shown adequate evidence of rehabilitation or reformation with regard to the alcohol consumption.” Tr. at 120. The Psychologist testified that this opinion is based on the lack of evidence that the Individual has stopped drinking, and the Individual’s testimony that his last use of alcohol occurred just 14 days ago. Tr. at 120. The Psychologist opined that, even with someone that completes an educational program including therapy and an IOP program, 14 days of abstinence is insufficient to establish reformation or rehabilitation. Tr. at 121. Noting that the Individual has not even completed any treatment such as an IOP program, the Psychologist concluded that he does not know whether the Individual can sustain abstinence for a longer period of time. Tr. at 121.

V. ANALYSIS

¹⁴ The DOE submitted post-hearing evidence from the New Mexico Courts docket stating that the charges were dismissed because the officer failed to appear for a motion hearing and the State elected to dismiss the DWI charge because the prosecution was unable to proceed. Ex. 16.

¹⁵ On January 16, 2020, the DOE Counsel submitted Exhibit 18, which was a memo from the Psychologist supplementing his hearing testimony by explaining his reasoning for changing his treatment recommendations for the Individual.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. "Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." Adjudicative Guidelines § 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO's security concerns have been mitigated to the extent that that granting the Individual's clearance is not an unacceptable risk to national security.

Guideline J Concerns

The Individual's nine arrests (including five alcohol-related arrests)¹⁶ raise significant security concerns under Guideline J of the Adjudicative Guidelines. An individual may mitigate security concerns under Guideline J if:

- (a) 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;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at §32(a)–(d).

The first and fourth mitigating conditions consider the individualized circumstances of each person to assess the likelihood that prior criminal conduct in which an individual engaged will recur. In this case, the LSO identified nine instances in which the Individual was arrested or cited for

¹⁶ Although the Individual's arrest on September 7, 2009, was not specifically for an alcohol-related crime, he testified that he had had been drinking "a few beers" at his house where the argument took place and where he was arrested for battery on a household member. Tr. at 111. Therefore, I consider this to be an alcohol-related arrest.

unlawful conduct. These offenses were not restricted to any particular period in the Individual's life, and in one instance, the Individual refrained from engaging in unlawful conduct for years at a time only to reoffend. The Individual has displayed a pattern of recurring arrests, even after completing 18 months of probation for his January 20, 2009, arrest and charge for possession of controlled substance. Moreover, his most recent arrest occurred on May 25, 2016, which is less than four years ago. In light of his long and frequent history of arrests dating back to June 2000, and in light of the fact that the Individual takes almost no responsibility for his previous arrests, but instead asserted at the hearing and in his Responses to the LOI, that most of those arrests were the fault of other people, I find that not enough time has elapsed to demonstrate mitigation that the criminal behavior is unlikely to recur. Accordingly, I find that the mitigating conditions articulated in Guideline E at §32(a) and §32(d) are not present in this case.

The Individual does not assert that he was pressured or under duress to commit and of the offenses cited in the Statement of Charges. Therefore, §32(b) does not provide mitigation for the security concerns raised under Guideline J.

The Individual asserts that many of his prior arrests were not his fault, but rather the fault of others who were with him at the time of arrest. However, while the record contains court records that reflect that while some of his charges were dismissed, those charges do not completely exonerate the Individual.¹⁷ Moreover, I find that the Individual's accounts of the incidents which led to his nine arrests to be lacking in credibility (for example, it is difficult to believe that one individual could be unjustly accused on so many occasions). Accordingly, I find that the Individual has not shown sufficient evidence for me to conclude that the Individual did not commit the offenses cited in the SSC. Therefore, §32(c) does not provide mitigation for the security concerns raised under Guideline J.

Because the Individual has not satisfied any of the mitigating conditions under Guideline J, I find that the security concerns raised under Guideline J in the Statement of Charges have not been resolved.

Guideline G Concerns

The Individual's four DUI and DWI arrests, and habitual consumption of alcohol to the point of impaired judgment raise security concerns under Guideline G of the Adjudicative Guidelines. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if:

¹⁷ For example, an Order of Dismissal on Deferred Sentence dated May 16, 2012, regarding the Individual's conviction on January 20, 2009, for Possession of a Controlled Substance, states the Individual was relieved of any obligations imposed on him and has satisfied criminal liability for the crime. Ex. A. While this case was dismissed, the Individual was not acquitted. Similarly, a court record regarding the charges on or about May 25, 2016, states the "state dismis[s]e[d] the matter to further investigate and attempt to apprehend the co-defendant who has pertinent information." Ex. 11. In addition, the state withdrew its prosecution of the charges occurring as a result of the Individual's May 25, 2016, arrest for Aggravated Battery (Great Bodily Harm) and Conspiracy. Ex. 6 at 1; Ex. 10 at 60. However, the letter from the Individual's public defender in that case states: "although the state is not prosecuting at this time, they still have within the statute of limitations period (five years) to charge the Individual with this case if he gets into any other trouble with the law." Ex. B.

- (a) 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 judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at §23(a)–(d). None of these mitigating conditions under Guideline G are applicable in this case.

The Individual has not established that the mitigation conditions described in Guideline G §32(a) are present. The Individual's drinking has continued until at least 14 days prior to the hearing. Moreover, during the present proceeding, the Individual initially underreported his amount of alcohol consumption to the Psychologist and only disclosed the truthful amount of his alcohol use after the Psychologist informed him he was going to send him for laboratory testing to assess his drinking use. These actions cast doubt on the Individual's current reliability, trustworthiness, and judgment.

Nor are any mitigating conditions described by Guideline G at § 23(b) present in this case. This mitigating condition requires that an individual demonstrate "a clear and established pattern of modified consumption or abstinence." Guideline G at § 23(b). The Individual, however, by his own admission, has only been abstinent from alcohol for 14 days as of the date of the hearing. Nor has the Individual acknowledged his alcohol problem, instead, he has testified that he believes that he does not have a problem with alcohol. Moreover, the Individual has not provided any evidence of significant actions that he has undertaken to overcome his alcohol problem.

The mitigating conditions set forth at Guideline G § 23(c) and § 23(d) are clearly inapplicable because the Individual is not currently in treatment and has not successfully completed any treatment program.

Because the Individual has not satisfied any of the mitigating conditions under Guideline G, I find that the security concerns raised under Guideline G in the Statement of Charges have not been resolved.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guidelines G and J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Therefore, I cannot conclude that granting DOE access authorization to the Individual “will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals