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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: June 7, 2021	)	Case No.: PSH-21-0053
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Issued: July 19, 2021

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**Administrative Judge Decision**

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Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> 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 be denied.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold an access authorization. As part of the process for obtaining an access authorization, on March 27, 2019, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP), in which he answered questions pertaining to his criminal record, past illicit drug use, and delinquent financial obligations. Ex. 8. As part of the investigation, the Local Security Office (LSO) obtained the Individual's credit report on April 9, 2019, and again, on April 22, 2020. Ex. 6; Ex. 7. The Individual also underwent an Enhanced Subject Interview (ESI) conducted by the Office of Personnel Management on May 17, 2019. Ex. 9. Based on the information provided, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he was entitled to a hearing before an Administrative Judge in order

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<sup>1</sup> Access to authorization is defined as "an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance

to resolve the substantial doubt as to 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of four other witnesses, along with nine exhibits, marked as Exhibits A through I (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0053 (hereinafter cited as "Tr."). The DOE Counsel submitted nine exhibits, marked as Exhibits one through nine.

## **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 substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E, F, and J.

Under Guideline E (Personal Conduct), "[c]onduct involving questionable judgement, 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 or sensitive information." Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "[d]eliberate omissions, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility trustworthiness, or award fiduciary responsibilities[.]" Adjudicative Guidelines at ¶ 16(a). With respect to Guideline E, the LSO alleged that (1) the Individual stated in his QNSP that he had not used marijuana in the previous seven years, but revealed during the ESI that he had used marijuana daily from 1990 to 2017; (2) the Individual admitted during the ESI that he was arrested and charged with Driving Under the Influence/Driving While Intoxicated (DUI/DWI) in 1984, despite stating in his QNSP that he had not been charged with alcohol-related charges; (3) The Individual admitted during the ESI that a Bench Warrant for a charge of being "Under Influence of Controlled Substance" was issued against him in 1991, despite stating in his QNSP that he had no drug-related charges; (4) the Individual indicated in his QNSP that he had not been arrested or charged with a crime in the previous seven years, but he had been charged with Auto Burglary in 2013, Battery Against a Household Member and Domestic Violence in 2014, and Forgery in 2014. Ex. 1 at 1.

Under Guideline F (Financial Considerations), "[f]ailure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 18. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are an "[i]nability to satisfy debts[.]" an "[u]nwillingness to satisfy debts regardless of ability to do so," and "failure to file... annual Federal, state, or local income tax returns[.]" Adjudicative Guidelines at ¶ 19(a), (b), and (f). With respect to Guideline F, the LSO alleged that (1) the Individual has unpaid collection accounts totaling \$13,073; (2) the Individual

has unpaid charge accounts totaling \$2,827; (3) the Individual has failed to file Federal and state income tax returns for the year 2017. Ex. 1 at 2.

Under Guideline J (Criminal Conduct), “[c]riminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into questions a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is “[a] pattern of minor offenses, any one of which on its own be unlikely to affect a national security eligibility, but which in combination cast doubt on the individuals judgement, reliability, or trustworthiness,” and “[e]vidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” Adjudicative Guidelines at ¶ 31(a)-(b). With respect to Guideline J, the LSO alleged that the Individual was charged with a number of criminal offenses from 1991 to 2017. Ex. 1 at 3-5.

### **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) (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**

In his March 27, 2019 QNSP, the Individual provided information regarding a number of past criminal offenses, and certified that he had no past alcohol and drug-related charges, and further, that he had not been arrested or charged with a crime in the previous seven years. Ex. 8 at 30, 36. The individual also provided information regarding various debts from 2014 to 2017 that he intended to “look into to resolve[,]” and specifically noting that he was “[c]atching up[]” on one account from 2014. Ex. 8 at 43-53

During a May 17, 2019 ESI, the Individual admitted to past use of methamphetamine, which not only resulted in poor judgement, but also in difficulty recalling events. Ex. 9 at 72. As a result, he could not remember every arrest or charge, but when the discussion turned to a particular 2009 arrest, the Individual stated that he believed that he was actually being arrested for charges originating in another city. However, he then indicated he had been accused of domestic violence occurring in the city of the 2009 arrest. Ex. 9 at 74. The Individual also told the OPM investigator that he had used marijuana daily from the 1990s to 2017, but that he had not intended to hide or conceal his marijuana use in the QNSP. Ex. 9 at 74-75. The Individual was also confronted with the fact that he had failed to list a 1984 DWI, and in response, he stated that he was under the impression he was under an obligation to provide information only from the prior ten years. Ex. 9 at 75. The Individual was also confronted with his 1991 bench warrant for being under the influence, a 2013 Auto Burglary charge, 2014 Domestic Violence and Battery Against a Household Member charges, and a 2014 Forgery charge that he did not list on his QNSP. Ex. 9 at 72, 78-80. Regarding the Forgery and Auto Burglary charges, he indicated that he was on drugs at the time, and likely forgot about the incidents as a result. Ex. 9 at 79-80. The Individual stated that he failed to list the 2014 domestic violence-related charges not only because he was unaware of these charges, but also because he was under the influence “most of the time and did not know many of the instances were actually occurring.” Ex. 9 at 79. Although he could not specifically remember the 1991 bench warrant, he did recount an incident of arrest that occurred somewhat contemporaneously. Ex. 9 at 72.

## **V. Hearing Testimony**

The first witness, the Individual’s brother, testified that he owes his work ethic and his understanding of “right from wrong” to the Individual, but found the Individual to be essentially unrecognizable during his period of substance abuse. Tr. at 13. He noted that they were raised with drugs and alcohol in their home. In 2016, he convinced the Individual to live with him and thus provided the Individual “a place to sober up.” The Individual has been abstinent since that time. Tr. at 13-16. The brother described the Individual as “honest,” “trustworthy,” and “reliable,” and stated that he now trusts the Individual’s judgement. Tr. at 16, 22-25. He attributed the Individual’s criminal history not only to drug and alcohol abuse, but also to the fact that the Individual would take punishment for certain crimes to spare the brother from the consequences of the crimes the Individual had committed. Tr. at 17-18, 21. The brother also stated that the Individual experienced “financial issues” during his period of addiction, but the brother stated that he had no knowledge whether the Individual had failed to file his taxes. Tr. at 20-21.

The Individual’s daughter, who now speaks to the Individual regularly after a period of estrangement, stated her belief that the acts of domestic violence that transpired during her childhood were the result of the Individual’s drug and alcohol use. Tr. at 27-28, 30, 34. The Individual has since apologized and taken responsibility for the wrongs he committed, and she was able to see how serious he was about changing his life. Tr. at 29-31. She feels his judgement is “[a] lot more clear.” Additionally, she testified that she now “never suspect[s] him of lying,” and trusts him to keep her and her daughter safe. Tr. at 32-33. Since resuming her relationship with her father five years ago, she has not seen the Individual use drugs or alcohol and stated that he advocates for complete abstinence. Tr. at 36.

The Individual's current colleague (who was also his former roommate) testified that the Individual has a "good work ethic[.]" stated that the Individual's judgement while "on the job has been spot on[.]" and indicated he finds the Individual to be reliable and honest. Tr. at 40, 44. While the Individual did not discuss his past criminal history at great length with the colleague, they did discuss the Individual's sobriety and the fact the Individual "is definitely never going back to [using drugs.]" Tr. at 46. While they were roommates, the Individual was always current with his share of the expenses. Tr. at 50. Another one of the Individual's colleagues confirmed that the Individual was dependable, reliable, trustworthy, and someone of good judgment at the time they worked together, and further, that he had no reason to question the Individual's work ethic. Tr. at 54-56.

The Individual began his testimony by asserting that he has not had any disciplinary actions or incidents at work, and that to his recollection, he was entirely truthful while completing his QNSP. Tr. at 61-62. The Individual attributed his failure to list all his criminal arrests, in part, to the fact that he did not obtain his criminal records from the one of the states in which he had been arrested. Tr. at 67.

Elaborating further, the Individual acknowledged in his QNSP having used various illicit substances and stated that he thought he had listed his marijuana use as well. He asserted that he did not intentionally omit his marijuana use in the QNSP and that he had disclosed his usage during his ESI. Tr. at 63-64. Similarly, he stated that he did not list his 1984 DUI charge, the 1991 bench warrant, a 2013 burglary, a 2014 Battery Against a Household Member, and a Forgery charge in his QNSP because he simply did not remember these incidents. Tr. at 66-68, 74-75.

As to the burglary incident, the Individual only remembered the charge when the OPM investigator described the vehicle, and he stated that he had not been arrested by police nor did he receive a summons for this incident. Tr. at 69.<sup>2</sup> With regard to the 2014 incident, the Individual stated that this concerned an argument he had had with his brother and insisted that he had never "received notice of being charged [with] battery or assault[.]" and further, he had not been detained on that occasion Tr. at 74-75. Similarly, he stated that he was never confronted by law enforcement regarding the Forgery incident but presumes the victim did contact law enforcement to report the matter. Tr. at 76. He admitted to committing the forgery to sustain his addiction. Tr. at 77. He stated that, had he remembered these various charges at the time, he would have listed them in his QNSP. Tr. at 77-79.

Concerning his criminal history recorded in the Notification Letter, the Individual confirmed that he completed ten days of jail time for a charge for which his brother in fact should have been criminally liable in 1991, but he did not deny that there was an outstanding bench warrant for his arrest during that time. Tr. at 103-05. He also denied any involvement with law enforcement from the period 1991 to 2001. Tr. at 105. The Individual did not dispute any of the 2005, 2007, 2010, 2017 charges and arrests enumerated in the Notification Letter, but did state that he was unaware of the 2006 charges related to breaking and entering until he was stopped by law enforcement and

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<sup>2</sup> As to this incident, the Individual denies the underlying allegations. Tr. at 70-74. The Individual did not offer specific information pertaining to this incident to the OPM investigator during the ESI and stated that he did not remember this incident at the time. Tr. at 72, 74.

notified of the outstanding warrant at a later time. Tr. a 106-12, 116-17, 122-24. He denied attempting to break into the victim's home but acknowledged that he entered her screened-in porch. Tr. at 109. The Individual unequivocally denied the 2009 arrest and charge for Domestic Violence, indicating he was not in the city in which the alleged act transpired in 2009, and further, he does not recall a domestic violence-related incident in 2009. Tr. at 111-12, 125. He also denied telling the OPM investigator that he had been arrested in the city in question in 2009 for domestic violence-related charges. Tr. at 112-16. While he did confirm a domestic violence-related incident in 2011, the Individual could neither confirm nor deny some of the 2011 charges and arrests listed in the Notification Letter, as he could not remember whether they transpired, but stated "I [do not] doubt them." Tr. at 117-20.

The Individual testified that he ceased all illegal substance and alcohol use on November 15, 2016, and has not used any illicit substance, alcohol, or unprescribed prescription medication since that date. Tr. at 64-65. The Individual attended four months of an outpatient treatment program, and later, during the pandemic, he attended behavioral counseling for a time. Tr. at 131, 138. He no longer associates with the individuals with whom he used to consume these substances, save for his brother, son, and mother. Tr. at 65. His brother and son are sober. Tr. at 65-66. The Individual stated "that [he will] never [] return to drugs and alcohol." Tr. at 127. Now, his "word is all [he] has. And the promise of being responsible[.]" Tr. at 127.

With regard to the debts listed in the Notification Letter, the Individual testified that only two of the listed debts remain on his credit report, and that these are the only two of which he is presently aware, although he admitted he had not examined his credit report prior to the hearing, relying on the information relayed to him by the person who examined the report on his behalf. Tr. at 81-85. Once he was made aware of the fact that the listed debts were an obstacle to obtaining a clearance, he endeavored to resolve them. Tr. at 81, 90. Specifically, regarding the medical debt, the Individual had been hospitalized for several days while he was homeless and was under the impression a specific institution had satisfied these obligations. Tr. at 85-86.<sup>3</sup> He denied being notified of these debts upon securing housing and stated that these debts were only brought to his attention during the clearance process. Tr. at 86. He admitted that he did not take immediate action to resolve these obligations because he was not financially stable at the time he was notified, and further, in the context of his contemporaneous life circumstances, "it [was not] a priority to [him.]" Tr. at 87-89.

Regarding the unpaid charge-off accounts, the Individual testified that, in terms of the debt totaling \$2,400, he received an offer to settle the matter, which he accepted and paid. Tr. at 90. Further, his vehicle was also repossessed to satisfy that debt, but he was not able to present a receipt or statement to show the same. Tr. at 90-91.<sup>4</sup> The Individual was not able to contact the company to

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<sup>3</sup> The Individual submitted a June 8, 2021 letter showing that a payment plan had been established to address medical debt totaling \$2,292. Ex. D. The first payment came due on June 15, 2021. Ex. D.

<sup>4</sup> The Individual submitted a July 1, 2021 letter indicating that a payment plan had been established to address the outstanding debt in the amount of \$2,400. Ex. E.

which he owes \$427, and assumes the business is now defunct, as he also did not believe this debt was listed on his credit report. Tr. at 91-92.<sup>5</sup>

Concerning the income taxes for tax year 2017, which he failed to file, he stated that his then-employer was not making the appropriate deductions from his paycheck and he did not have the means to pay his income taxes when it came time to file. Tr. at 92-93, 97. Later, he had an acquaintance file his federal income taxes for tax years 2017. Tr. at 93, 98.<sup>6</sup> In his haste, he neglected to sign his 2017 federal income tax return, which he rectified upon receiving notice. Tr. at 93-94. He did make a spontaneous payment of \$1,000 to the Internal Revenue Service (IRS), an amount greater than the amount he owes, “in case there [were] any late penalties[.]” Tr. at 94, 96-97. The Individual testified that he filed his state income taxes for tax year 2017 and satisfied that tax obligation. Tr. at 95-96.<sup>7</sup> He is now current on tax years 2018, 2019, 2020, and 2021. Tr. at 98. The Individual explained that in the past, he was not concerned with his finances, but now that he has a new life, he does not anticipate having similar financial issues in the future. Tr. at 100-01.

## VI. Analysis

### Guideline E

An Individual may mitigate guideline E concerns if “[t]he Individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. Adjudicative Guidelines at ¶ 17(a). As an initial matter, I recognize that the Individual has a substantial criminal history and that, based on his testimony, many of these arrests and charges occurred while he was under the influence. Accordingly, it is understandable that he may forget some charges or arrests, especially when considering his DUI dated as far back as 1984. However, I would be more inclined to accept this explanation if the omitted charges and arrests were of a far less severe nature, and therefore, likely less memorable. “[A] QNSP is an important tool in establishing whether an individual is fit to hold a security clearance, and accordingly, an applicant is held to a higher standard when completing such a form.” See *Personnel Security Hearing*, OHA Case No. PSH-21-0009 at 9 (2021) (citing *Personnel Security Hearing*, OHA Case No. TSO-0023 at 30-31 (2003)). Further, there is nothing in the record indicating that the Individual in the present case disclosed the arrests and charges from 1984, 1991, 2013, and 2014 specifically stated under the Guideline E concerns in the Notification Letter prior to being confronted with them. Based on the foregoing, I find that the Individual has failed establish mitigation pursuant to Adjudicative Guidelines at ¶ 17(a), and therefore the security concerns raised under Guideline E in the Notification Letter have not been resolved.<sup>8</sup>

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<sup>5</sup> The July 2, 2021 credit reports submitted by the Individual indicate this account was closed, with one report indicating it was “charged off as bad debt.” Ex. F at 6; Ex. G at 6; Ex. H at 8.

<sup>6</sup> The Individual submitted a copy of the federal income tax return that he filed for tax year 2017, indicating he owes \$863. Ex. A. The Individual submitted two pages of the filed 2017 federal income taxes, revealing his signature as well as a stamp indicating the IRS’s initial receipt of the tax return on March 26, 2021. Ex. I.

<sup>7</sup> An image of a money order in the amount of \$146.08 to the New Mexico Taxation Revenue Department accompanied an image of a notice of assessment of taxes addressed to the Individual. Ex. C.

<sup>8</sup> I need not address the remainder of the mitigating factors in Guideline E at ¶ 17(b)-(g), as they are not applicable.

**Guideline F**

An individual may mitigate security concerns under Guideline F if “[t]he conditions that resulted in the financial problem were largely beyond the person’s control...and the individual acted responsibly under the circumstances. Adjudicative Guidelines at ¶ 20(b). The Individual spent years under the influence of illicit substances before achieving sobriety in 2016. He testified that, during those years, he was not particularly concerned with his financial state, and further, that he spent some time homeless, leaving him without an address to receive notice of debts and similar obligations. However, I cannot conclude that the Individual acted responsibly upon the improvement of his circumstances. After securing a home and employment, the Individual did not seek to rectify the situation in a timely manner, admitting that these matters were not a priority for him. For the foregoing reasons, I also cannot find that the behavior occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgement. While I acknowledge the Individual’s testimony regarding the care he intends to take going forward, I am concerned by the fact the Individual had not taken action regarding these matters prior to his QNSP, stating that he only endeavored to resolve matters once he realized they proved to be an obstacle to his clearance. Further, his failure to examine his credit report prior to the hearing, instead relying on information relayed to him, does not evidence good judgement. Accordingly, the Individual has failed to mitigate the Guideline F concerns pursuant to Adjudicative Guidelines at ¶ 20(b).

Guideline F concerns may also be mitigated if “[t]he Individual has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Adjudicative Guidelines at ¶20(d). The Individual submitted evidence indicating that he established a payment plan to address an unpaid charge-off account in the amount of \$2,400 and a medical debt totaling \$2,292. Ex. D; Ex. E. These efforts are commendable, do not address the remainder of the medical debt listed in the Notification Letter. Further, these obligations remain ongoing, even if they no longer appear on the Individual’s credit report. Accordingly, the Individual has failed to completely mitigate the Guideline F concerns pursuant to Adjudicative Guidelines at ¶ 20(d).

Regarding the tax specific concerns outlined in the Notification Letter, an individual may mitigate those concerns if he “has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.” Adjudicative Guidelines at ¶20(g). The Individual submitted evidence of his completed federal income tax return for tax year 2017, signed by the Individual and received by the IRS, testimony that he had provided the IRS with a sum of \$1,000 to satisfy the outstanding amount as well as any potential late fees, as well as a money order to satisfy what he owed in state income taxes for tax year 2017. Insofar as the Guideline F concerns pertain to the Individual’s unfiled 2017 taxes, I am satisfied that the Individual has mitigated these concerns.

For the foregoing reasons, I find that the Individual has mitigated some, but not all, of Guideline F concerns outlined in the Notification Letter.<sup>9</sup>

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<sup>9</sup> I need not address the remainder of the mitigating factors in Guideline F at ¶ 20(a), (c), (e), and (f), as they are not applicable.



## Guideline J

An individual may mitigate Guideline J concerns if “[s]o 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 judgement[.]” or “[t]here 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 ¶ 12(a), (d). The Individual has made outstanding strides in changing the circumstances of his life, and the effort he has put into this endeavor is undeniable. However, although the first arrest or charge documented in the Notification Letter took place in 1984, over 30 years ago, the most recent arrest or charge took place much more recently, in 2017.<sup>10</sup> In the context of the Individual’s arrest history, his current four-year history cannot be considered sufficient to totally assuage the security concern his record raises. The Individual achieved sobriety in 2016, and many of these arrests and charges took place when the Individual was under the influence. However, the very nature of some of the acts the Individual acknowledged he committed provide me with some concern that these criminal acts may be repeated; specifically, the Individual has a number of domestic violence-related charges, the most recent of which was in 2014, and the nature of such an offense is interpersonal and not necessarily entirely drug-related. Accordingly, I cannot find that the criminal behavior is unlikely to recur or took place under unusual circumstances.

Although the Individual has made strides in mitigating security concerns under Guideline J in that he has secured employment, he has not fully mitigated those concerns. As stated above, the most recent arrest took place in 2017, and this is in the context of a criminal history rife with such charges as Domestic Violence, Forgery, and Failure to Appear. The severity of the number of the charges outlined in the Notification Letter, combined with the recency of his legal entanglements, outweigh the mitigating factors presented. Although the Individual unequivocally denies an incident that took place in 2009, despite indications to the contrary in the OPM investigator’s report, the Individual has admitted to offenses that directly speak to his trustworthiness and judgement, like Forgery and Domestic Violence. Further, the Individual has not presented any evidence of ongoing job training, higher education, or community involvement. For the foregoing reasons, I find that the Individual has not mitigated the Guideline J concerns outlined in the Notification Letter.<sup>11</sup>

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<sup>10</sup> The Notification Letter enumerated twenty-five different arrests and charges under the Guideline F concerns, which included an animal-related charge in 2015 and his subsequent arrest in 2017 for failure to attend a pet owner training program ordered by the court. Ex. 1 at 3-4. Regarding the 2015 animal-related charges, the Individual stated that these matters pertained to a dog that he did not own, and although he informed the prosecutor of this fact, the prosecutor “ended up talking [him] into just pleading[.]” Tr. at 120-22. Assuming *arguendo*, that I find the Individual has mitigated the concern arising from this charge, given my other findings regarding his remaining criminal history, my decision regarding whether all the Guideline J concerns have been mitigated would still be unchanged.

<sup>11</sup> I need not address the remainder of the mitigating factors in Guideline J at ¶ 32(b) and (c), as they are not applicable.

## **VII. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E, F, and J of the Adjudicative Guidelines. After considering all of the evidence, both 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. 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 be denied at this time. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals