

*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: December 29, 2021) Case No.: PSH-22-0039
)
)
_____)

Issued: May 9, 2022

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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, "Procedures for Determining Eligibility for Access to Classified Matter and 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

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. A 2016 background investigation of the Individual concerning his eligibility to hold a security clearance revealed that, in 1998, he was arrested for domestic violence related to a dispute with his mother and taken to a juvenile detention center. Exhibit (Ex.) 11 at 75. On January 23, 2021, the Individual was arrested for Aggravated Battery Against a Household Member (Battery) after a domestic dispute with his girlfriend (Girlfriend). Ex. 10. The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the circumstances of his arrest. Ex. 9. In his response to the LOI, the Individual asserted that a verbal dispute with the Girlfriend "briefly turned physical" and he was "forced to self-defend." *Id.* at 1. The Individual was arrested for Battery for a second time following a domestic dispute with the Girlfriend on September 3, 2021. Ex. 7 at 2-3.

The LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary

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.

of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eleven exhibits (Ex. 1–11). The Individual submitted thirteen exhibits (Ex. A–M). The Individual testified on his own behalf and offered the testimony of a friend (Individual’s Friend), his counselor (Individual’s Counselor), a former coworker (Individual’s Coworker), and a psychologist who evaluated him in advance of the hearing (Forensic Psychologist). Hearing Transcript (Tr.) at 3, 25, 54, 76, 86, 154. The LSO did not call any witnesses. *Id.* at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline J (Criminal Conduct) as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual’s arrest for domestic violence in 1998 and his two arrests for Battery against the Girlfriend in 2021. Ex. 1. The LSO’s allegation that the Individual was arrested for domestic violence and Battery justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(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 Dep’t 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 was arrested for domestic violence as a minor in 1998 following a dispute with his mother. Ex. 11 at 75. Records obtained during the investigation of the Individual's eligibility for a security clearance reflected that the Individual's mother accused him of throwing objects and chasing her after she took away his car keys, causing her to fear that he would strike her. *Id.* The Individual denied these allegations. *Id.*; *see also* Ex. 9 at 6 (reflecting the Individual's response to the LOI in which he asserted that the dispute in question was "a verbal altercation" and that his mother called the police to "teach [him] a lesson . . ."). A law enforcement officer who responded to the incident observed a hole in a wall, a broken chair, and numerous objects on the ground, and placed the Individual under arrest. Ex. 11 at 75.

As an adult, the Individual earned a bachelor's degree and obtained employment with the DOE contractor. Tr. at 169–73; Ex. B; Ex. D at 5–6. In 2020, the Individual earned a graduate degree to allow him to take on a more advanced role with the DOE contractor. Tr. at 174–76; Ex. D at 1–2. The Individual has a positive employment record with the DOE contractor. Ex. C; *see also* Tr. at 81–83 (reflecting the opinion of the Individual's Coworker that he was a positive contributor who exercised good judgment and a high level of professionalism in the workplace).

The Individual dated several women as an adult who deny that he engaged in domestic violence against them. Tr. at 179–80; Ex. F (reflecting the statement of an ex-girlfriend of the Individual that she found him to be a kind person who had never behaved violently towards her); Ex. H (reflecting the statement of another ex-girlfriend of the Individual who denied that the Individual had ever acted violently towards her). A long-time friend of the Individual, who was previously employed as a law enforcement officer, testified that he had never observed the Individual display violent tendencies and that he believed that the Individual was a trustworthy person. Tr. at 27, 30, 33, 40.

The Individual met the Girlfriend in August or September of 2020. Tr. at 176. After they dated for several months, the Girlfriend moved into the Individual's home in late December of 2020. *Id.* at 178. The Individual did not perceive any substance abuse problems on the part of the Girlfriend prior to their cohabitation. *Id.* at 180–81. According to the Individual, shortly after the Girlfriend moved into his home, he frequently observed her consume alcohol to excess and even to the point where she lost consciousness. *Id.* at 181. The Individual represented that he tried to prevent her from drinking and characterized her as "defensive," "angry," and "threatening" in response to his efforts to control her drinking. *Id.* at 183–85. The Individual and the Girlfriend also had conversations about her communications with an ex-boyfriend, which he sometimes perceived as an effort to "taunt" him, that caused him to become "frustrated." *Id.* at 186–87, 206–07.

In the early morning hours of January 23, 2021, law enforcement officers were summoned to the Individual's home due to reports of domestic violence.² Ex. 10 at 2; *see also* Tr. at 188–89

² The Individual claimed that the Girlfriend called her father after arguing with the Individual and that her father called the police. Tr. at 229–30, 232; Ex. 9 at 1. The police report prepared in connection with the incident indicates that the Girlfriend called the police and reported that the Individual "'slammed' her into 'glass.'" Ex. 10 at 2.

(reflecting the Individual's testimony that the Girlfriend woke him up "super early" to "dig into [him] about this [] other guy . . . that she had been contacting"). The Girlfriend told a law enforcement officer who responded to the call that the Individual attacked her while she was sleeping, threw her on the ground, and dragged her down a flight of stairs. Ex. 10 at 2. The Individual denied that there had been "physical violence." *Id.* The law enforcement officer observed cuts on the Girlfriend's left hand and right foot, and saw blood on the Individual's right hand which he believed to be the Girlfriend's based on the absence of wounds on the Individual.³ *Id.* at 2. The law enforcement officers deemed the Individual to have been the predominant aggressor based on the observed injuries, and placed the Individual under arrest for Battery. *Id.* at 2–3.

On January 26, 2021, the LSO received a Personnel Security Information Report revealing that the Individual had been arrested for Battery. Ex. 8 at 1. In March 2021, the LSO issued the Individual the LOI concerning the circumstances of his arrest. Ex. 9. In his response, the Individual asserted that he and the Girlfriend engaged in a verbal dispute "about an ex-boyfriend she made contact with" and that he was "forced to self-defend" when the dispute "briefly turned physical." *Id.* at 1; *see also* Tr. at 190 (representing that the Individual put the Girlfriend in "a boxing hug" to restrain her from striking him or damaging his property). The Individual represented that he had learned that he needed "to improve [his] anger management and communication skills" and that he had voluntarily enrolled in counseling for anger management to address this issue. Ex. 9 at 4–5. The charges against the Individual were dismissed as a result of the Girlfriend refusing to cooperate with the prosecution. *See* Ex. 4 at 1 (summarizing information obtained by the LSO concerning the Individual's eligibility for a security clearance).

In June 2021, the Girlfriend broke into the Individual's home by crawling through a "doggie door." Tr. at 202. The Individual called law enforcement to report the intrusion and the Girlfriend fled the scene before law enforcement officers arrived. *Id.* at 203. Approximately one month later, the Girlfriend contacted the Individual via social media, and they began exchanging messages multiple times weekly. *Id.* at 139, 204–06. Based on these messages, and information that he had received from the Girlfriend's parents that she had entered treatment for substance abuse, the Individual determined that "she seemed like she was doing better." *Id.* at 204–06.

According to the Individual, time passed after they first exchanged messages on social media until the Girlfriend called him to ask for help because she was at her ex-boyfriend's residence and felt that she was in danger. *Id.* at 207. The Individual claimed that he decided to pick her up because he "wanted to be helpful" and "cared about her." *Id.* at 208, 219. According to the Individual, when he saw her "[s]he looked beat up. She had, you know, a black eye, marks all over her face." *Id.* at 207. He asserted that she refused his offer to transport her to a hospital, and that he instead took her to his home at her request. *Id.* at 208.

The Individual testified that he believed that the Girlfriend's parents would pick her up from his home, but that they did not respond to his text messages. *Id.* at 209. According to the Individual,

³ At the hearing, the Individual represented that he and the Girlfriend both suffered cuts after a floor lamp was knocked over while he attempted to restrain her. Tr. at 190. He testified that he did not "understand why they didn't see the cuts on [his] hand, because [he] had been sweeping up the glass and picking up the pieces, and [he] cut [him]self doing that." *Id.* at 230.

he decided to allow the Girlfriend to remain in his home overnight. *Id.* He claims that he awoke in the early morning hours “one or two days later” to find the Girlfriend consuming alcohol and that he took it from her and poured it down the drain which caused her to become angry. *Id.* at 209–10, 236.

On September 3, 2021, the Girlfriend’s mother called 911 and reported that the Girlfriend had called her and said that the Individual “had a shotgun” and was not allowing her to leave the premises.⁴ Ex. 7 at 2. The law enforcement officers who responded to the call observed “fresh and recent bruising” to the Girlfriend’s eyes, “apparent blood vessel bursting in her left eye, swelling and redness to her forehead, fresh redness, bruising to her throat and area [sic] of her lower chin, and bruising to her right knee and both arms.” *Id.* The Girlfriend alleged that the Individual struck her multiple times during an argument and had previously strangled her “to the point where she would nearly lose consciousness.” *Id.* The Girlfriend represented that they had argued about “his possible sexual orientation and her [] prior relationships.” *Id.* The Individual represented to the law enforcement officers that the Girlfriend was “an alcoholic and falls.”⁵ *Id.* at 3. The law enforcement officers arrested the Individual for Battery. *Id.* at 2–3. The Girlfriend was transported to a hospital by ambulance for treatment of her injuries. *Id.* at 3.

On September 26, 2021, the Girlfriend came to the Individual’s home and a neighbor of the Individual escorted her off the Individual’s property while the Individual retreated into his home. Tr. at 220; *see also* Ex. M (reflecting the opinion of the neighbor that the Girlfriend appeared intoxicated and including a photo taken by the neighbor that shows the Girlfriend receiving medical attention from an Emergency Medical Technician while apparently unconscious). The charges against the Individual related to his September 2021 Battery arrest were dismissed in October 2021 after the Girlfriend failed to appear at a hearing. *See* Ex. 3 at 1 (summarizing information obtained by the LSO concerning the Individual’s eligibility for a security clearance).

The Individual entered counseling with the Individual’s Counselor in September 2021. Tr. at 57. The Individual has attended counseling at least once every two weeks since that time and has not missed a session. *Id.* The Individual’s counseling is focused on “working on relationships overall . . . and especially working on strategies for frustration and regulation for negative feelings.” *Id.* at 58. The Individual’s Counselor has advised the Individual “you can’t be too trusting. You can’t make friends too quickly whether you have a focusing problem or not. And above all you have to think before you act. You have to think about things. You have to never be impulsive when you’re making friends.” *Id.* at 62. The Individual’s Counselor opined at the hearing that she believes that he has made progress because he has told her that he has not answered the phone when the Girlfriend calls or admitted her when she comes to his home. *Id.* at 61.

⁴ The Individual’s girlfriend told the law enforcement officers who responded to the 911 call that the Individual possessed firearms but that “none were used in the commission of any crime during the incident.” Ex. 7 at 2.

⁵ At the hearing, the Individual claimed that he had gone to his room after the Girlfriend became agitated at him for taking alcohol away from her and implied that the injuries the law enforcement officers observed on her body were attributable to her ex-boyfriend. Tr. at 210, 215, 217. In light of the inconsistency between this claim and the Individual’s account to the law enforcement officers that the Girlfriend was “an alcoholic and falls,” as well as the lack of evidence substantiating his claim that the Girlfriend expressed concerns for her safety while at her ex-boyfriend’s home, I do not credit the Individual’s account of how the Girlfriend suffered her injuries.

In April 2022, the Forensic Psychologist conducted a four-and one-half-hour clinical interview of the Individual. *Id.* at 149. He also evaluated the results of psychological testing conducted by another psychological practitioner and reviewed portions of the administrative record. *Id.* at 87–88, 95; *see also* Ex. J (reflecting the materials provided to the Forensic Psychologist). The Forensic Psychologist opined that the incidents cited in the SSC were “outliers” that did not raise concerns related to the Individual’s honesty, trustworthiness, or judgment. Tr. at 96. The Forensic Psychologist did not believe that the Individual’s altercation with his mother or incidents with the Girlfriend were related because the underlying causes of the disputes were different and the altercation with the Individual’s mother caused minor property damage while the altercations with the Girlfriend were “different animals.” *Id.* at 105–06. The Forensic Psychologist likewise opined that the Individual’s altercations with the Girlfriend did not constitute a pattern because the first incident occurred during a domestic dispute in the household, whereas the second one occurred in the context of a platonic relationship where he was providing her with a place to stay while waiting for her to find alternative living arrangements. *Id.* at 109–14.

The Forensic Psychologist credited the Individual’s account of his altercation with his mother because the Individual was consistent in his account of the incident during the clinical interview and was willing to admit that he had been partially at fault in the dispute that led to his arrest. *Id.* at 101–03. The Forensic Psychologist opined that the Individual’s formation of his relationship with the Girlfriend did not reflect poor judgment because she appeared to have positive characteristics and did not display evidence of an alcohol use disorder prior to their cohabitation. *Id.* at 106–07. The Forensic Psychologist noted that the Individual demonstrated insight into how his efforts to control the Girlfriend’s drinking had started a cycle and identified ways he could have better handled the disputes that occurred. *Id.* at 118–20. The Forensic Psychologist opined that the Individual demonstrated evolved decision making and effective boundaries by refusing to engage with the Girlfriend despite her repeated attempts to do so following the second altercation. *Id.* The Individual also demonstrated the ability to identify similar behavioral “flags” in other people with whom he interacts and an appropriate ability to avoid exposing himself to adverse consequences by associating with these types of people. *Id.* at 121.

V. ANALYSIS

A. Guideline J

The Individual’s arrests for domestic violence and Battery justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b). 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) [there is] 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.

Id. at ¶ 32(a)–(d).

Two of these mitigating conditions are applicable to the Individual’s alleged domestic violence against his mother. The first mitigating condition is applicable because over twenty years elapsed between his 1998 arrest and the next alleged criminal conduct in which he engaged. *Id.* at ¶ 31(a). The fourth mitigating condition is also applicable because, over the decades following his alleged misconduct, the Individual demonstrated rehabilitation through his college education and positive employment record. *Id.* at ¶ 31(d). In considering the applicability of these mitigating conditions, I placed heavy weight on the fact that the Individual was a minor when he allegedly committed the offense and lacked the “age and maturity” to fully exercise sound judgment. 10 C.F.R. § 710.7(c).

However, the Individual has not established the applicability of any of the mitigating conditions with respect to his alleged Battery offenses against the Girlfriend. The Individual asserted that he did not commit either alleged Battery and that his sworn testimony at the hearing, the Girlfriend’s failure to cooperate with his prosecution, and the opinions of his Friend and former girlfriends that he would not have committed the offenses were sufficient to establish that there was no reliable evidence to support that he committed the offenses. I do not agree.

The police reports prepared in connection with his arrests for Battery, both of which contain detailed, contemporaneous descriptions of injuries the law enforcement officers observed on the Girlfriend and conclusions that the Individual was the predominant aggressor in the altercations, are strong evidence that the Individual committed the offenses. Moreover, I find the Individual’s explanations for the injuries the officers observed on the Girlfriend in connection with his September 2021 arrest extremely implausible and indicative of a lack of credibility on his part. For these reasons, I conclude that the third mitigating condition under Guideline J is inapplicable. Adjudicative Guidelines at ¶ 31(c).

The Individual also claimed that the Girlfriend’s alcohol abuse caused the disputes that led to his arrest, and that counseling had helped him to exercise better judgment through detecting behavioral red flags and avoiding forming relationships with persons who displayed these red flags. In support of these claims, the Individual offered the opinion of the Forensic Psychologist that he demonstrated insight into the causes of the altercations and that his improved decision making reduced his risk of placing himself into situations that could result in his arrest. Thus, the Individual asserted that the conflict in which he engaged with the Girlfriend was an unusual circumstance which is unlikely to recur.

I am not convinced that the Girlfriend’s purported alcohol abuse constituted unusual circumstances explaining the Individual’s conduct. Neither police report associated with the Individual’s arrests for Battery indicates that the arresting officers observed signs that the Girlfriend was intoxicated, and the Individual’s response to the LOI did not mention alcohol

as a cause of the January 2021 altercation. Instead, the Individual's response to the LOI and the police report associated with his September 2021 arrest suggest that the Individual and the Girlfriend fought over her communications with another man. While the Girlfriend may well have suffered from an alcohol use disorder, there is nothing in the record except the Individual's testimony and statements to others to support his claim that the altercations that led to his arrests were precipitated by her intoxication. Rather, it appears that the Individual is using her alcohol abuse as an excuse for his own violent behavior during domestic disputes.

Even if the Girlfriend behaved violently while intoxicated as he claims, I would still conclude that the Individual's concerning behavior is not unlikely to recur. The Girlfriend's injuries as described in the September 2021 police report were significant, and I do not credit his claim that another man caused the injuries. Furthermore, his decision in September 2021 to allow an allegedly unstable, alcohol abusing person into his home, even after he claims that she falsely accused him of committing a violent crime, is inexplicable. In light of the Individual's extremely poor decision making, and efforts to shift responsibility to the Girlfriend and another man, I am not convinced that he acknowledges the wrongfulness of his conduct and that it will not recur. For these reasons, I find that the first mitigating condition under Guideline J is inapplicable. *Id.* at ¶ 32(a).

The remaining two mitigating conditions are clearly inapplicable in this case. The Individual does not assert that he was pressured or coerced into committing criminal conduct, and thus the second mitigating condition is not applicable. *Id.* at ¶ 32(b). The fourth mitigating condition is inapplicable because the Individual's conduct was recent and the positive employment and educational achievements the Individual offered as proof of rehabilitation occurred prior to the alleged criminal conduct. *Id.* at ¶ 32(d).

The record strongly suggests that the Individual violently injured the Girlfriend during domestic arguments and used her substance abuse as an excuse for his criminal conduct. The Forensic Psychologist offered a reasonable opinion that the Individual's psychological profile and insight into his mistakes reduce his risk of recidivism and do not cast doubt on his judgment, reliability, and trustworthiness. However, I find that the concerns raised by the police reports, the Individual's implausible explanations for the Girlfriend's injuries, and the Individual's extremely poor decision making leading to his altercations with the Girlfriend are too weighty to be overcome by the impression formed by the Forensic Psychologist in his clinical interview. Thus, I find that the Individual 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 DOE to raise security concerns under Guideline J of the Adjudicative 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the

Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals