

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO presented the testimony of the Psychiatrist. The Individual submitted thirty-eight exhibits, marked Individual's Exhibits (Ind. Exs.) 1 through 38. The LSO submitted thirteen exhibits, marked Exhibits (Exs.) 1 through 13.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1 at 5-7.

Guideline G provides that “[e]xcessive 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.” Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]” *Id.* at ¶ 22(d). The SSC cited the following information:

1. [In October 2021, the Psychiatrist] evaluated [the Individual]. In his report dated October 21, 2021, [the Psychiatrist] concluded that [the Individual] met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria, for Alcohol Use Disorder [AUD] – Mild, without adequate evidence of rehabilitation or reformation.

Ex. 1 at 5. The above information justifies the LSO's invocation of Guideline G.

Under Guideline J, “[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). The SSC cited the following information:

1. On October 25, 2021, [local authorities] arrested and charged [the Individual] with Domestic Violence (7 counts), False Imprisonment (2 counts), and Stalking (1 count) after he committed the following against his ex-girlfriend:
 - a. On September 27, 2021, he made threats to his ex-girlfriend and told her that she was destroying his life and admitted to making poor choices and several mistakes.

² The LSO's exhibits were combined and submitted in a single, 379-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

In October 2021, he continued to harass her and threatened her over a social platform used for child custody exchanges.

- b. In July and August 2021, he was seen driving by his ex-girlfriend's residence multiple times during the day and night. In August 2021, he sent her a series of emails admitting to driving by her residence at night to see what vehicles were parked in her driveway and he would take pictures of them. He also sent her multiple messages telling her to kill herself and wishing she was dead.
- c. On May 7, 2021, he barricaded his ex-girlfriend in a bedroom at her residence. He refused to let her leave the residence and got in her face shouting at her. She was scared to call the police due to his aggressive behavior and him wanting to harm himself if the police were called.
- d. On April 4, 2021, he showed up at his ex-girlfriend's residence banging on the bedroom window. He was yelling, crying, and begging her to resume a romantic relationship with him. She let him in her house to not cause a scene. She refused his pleadings, and he ripped her television off the mantle and broke other things. She told him that if he did not leave, she was going to call the police. When he was leaving her residence, he slammed the door so hard that it put a hole in the wall. After he left, he began to text her begging her not to call the police.
- e. On March 30, 2021, he got into an argument with his ex-girlfriend at her residence and when she tried to walk away from the situation, he grabbed her in an aggressive manner while she was holding their six-month old child. He pulled her towards him not allowing her to leave the room. As he was leaving her residence, he kicked over her firepit and threw her patio furniture across the yard.
- f. In March 2021, his ex-girlfriend asked him to leave her residence due to his hostile nature, and as he was leaving, he spit in her face.
- g. In March 2021, he became irate after his ex-girlfriend asked him to help her with their six-month old child. He got in her face, pinned her against the wall and threatened her. He flipped over the couch and blocked the front door with a table and chairs and smashed several items.
- h. In February 2021, he and his ex-girlfriend got into an argument while she was breastfeeding their five-month-old child. He grabbed her by her wrists leaving marks on her. She ordered him to let her go and he then took a barstool and slammed it on the ground in anger.
- i. In January 2021, his ex-girlfriend asked him to help clean the garage. He grabbed a broom out of her hand and threatened her with it. He threw the broom across the garage, leaving a laceration on her hand along with blood evidence on the wall.

2. On June 14, 2020, [local authorities], arrested and charged [the Individual] with Domestic Assault after he smashed his ex-girlfriend's I-Pad, grabbed her, and threw her into the bathtub attempting to take her phone.

Ex. 1 at 5-7. The above information justifies the LSO's invocation of Guideline J.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (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 or her eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 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 is a member of the armed services who has served this country for over a decade in a career that includes active-duty combat deployments. Tr. at 129, 159.

The record includes an October 2021 report from the local police department ("Police Report") which provided the basis for the Individual's most recent arrest and criminal charges. Ex. 10. The allegations contained therein are listed in the SSC and are recounted above. The Individual provided exhibits and testimony in order to challenge the allegations and otherwise mitigate the security concerns identified in the SSC.

Turning first to the Individual's June 2020 arrest for "Domestic Assault" recounted above, the record includes a written incident report that the Individual submitted to his employer shortly after his arrest. Ex. 9. Therein, the Individual stated that he regretted his behavior, that he accepted full responsibility, and that he would "never allow a situation to spiral out of control" or "allow

[himself] to become part of” a similar situation. *Id.* at 49-50. He also admitted to being “physically violent” with his then-girlfriend by grabbing and pushing her, which resulted in both of them falling into the bathtub, when describing the incident during a 2021 Threat Assessment (TA) investigation conducted by his employer.³ Ex. 8 at 44. In his written response to the SSC (“SSC Response”), the Individual stated that his ex-girlfriend “got physical” by hitting, punching, and scratching him during the incident. Ind. Ex. 38 at 6-7.⁴ At the hearing, he testified that they were “fighting over a phone,” and his ex-girlfriend became bruised when they both slipped and fell into a bathtub. Tr. at 144. He testified that he spent the night in jail as a result of the arrest, and the charges were later dismissed.⁵ *Id.* at 170, 174.

After his arrest in 2020, the Individual and his ex-girlfriend moved in together that December because they were raising a newborn child together. *Id.* at 138. The Individual testified that, by this point, his ex-girlfriend had become manipulative, untrusting, and controlling due to the Individual “talking to another girl.” *Id.* at 137, 140-41. For example, the ex-girlfriend went so far as to install “spyware” on the Individual’s phone so that she could view his text messages. *Id.* at 140-41. The Individual allowed this even though “other people” said it was not normal because he thought it was “normal to help build trust to better the relationship,” and he wanted to have a relationship with his child. *Id.* at 141.

The record contains the following information related to the remaining allegations recounted above and in the SSC that prompted the Individual’s October 2021 arrest. Regarding the September 27, 2021, allegations of harassment and threatening behavior, the Individual completely denied them in the SSC Response. Ind. Ex. 38 at 13. As for the July and August 2021 allegations, the Individual explained that he only came to his ex-girlfriend’s residence to obtain personal items on three separate occasions after she told him that she had placed his property outside for him to retrieve. *Id.* at 15. The Individual testified that his ex-girlfriend enticed him to come over by lying because she never placed the property outside. Tr. at 142. In his SSC Response, he admitted to messaging her that she should “kill herself” because he was upset and frustrated with her conduct. Ind. Ex. 38 at 15.

Regarding the May 2021 incident, the Individual stated in the SSC Response that they had a “heated” argument in a room but denied that he “barricaded her in her residence.” Ind. Ex. 38 at 16. He also testified that he moved out from their joint residence in May 2021. Tr. at 141. As for the April 2021 incident, he explained in the SSC Response that he accidentally broke his ex-girlfriend’s candle as he was removing his television from her wall since she had asked him to leave. Ind. Ex. 38 at 17. In frustration with what he considered to be her over-reaction to the candle breaking, he “threw a television remote at the wall,” which “damaged the wall.” *Id.* He stated that

³ The TA investigation was conducted because his then-current girlfriend described his allegedly abusive behavior to her coworkers, and those allegations made their way to a manager of their joint employer. Ex. 8 at 38.

⁴ This is a standalone exhibit, and the page number refers to the page of the separate electronic document.

⁵ In the SSC Response, the Individual stated that the charges were dismissed because the ex-girlfriend “denied the contents of the report she had given to the police and wrote a letter to the District Attorney . . . stating she did not wish to press charges because none of what she had said at the time was true.” Ind. Ex. 38 at 7. However, the Police Report recounts the ex-girlfriend’s statement that she “dropped charges . . . due to her being pregnant and not knowing what to do.” Ex. 10 at 55.

afterward he sent her a text message to ask that “she not falsely elevate this interaction into a police matter.” *Id.* He testified that her manipulation was “nonstop” during this period, and she would constantly threaten to report his behavior to their joint employer. Tr. at 143. The Police Report indicates that the ex-girlfriend alleged that the Individual was “drink[ing] heavily” during this period. Ex. 10 at 57.

Turning to the most recent of the three March 2021 incidents, the Individual stated in the SSC Response that on March 30, during the argument, he grabbed his ex-girlfriend’s hand in “an affectionate manner” to diffuse the argument, but she jerked her hand away and became “hostile and irate.” Ind. Ex. 38 at 18. As he left the location “angry and hurt,” he admitted that he “kicked” the firepit,” but he denied throwing her patio furniture. *Id.* Regarding the second March 2021 incident, the Individual categorically denied ever spitting in his ex-girlfriend’s face. Ind. Ex. 38 at 20; Tr. at 145. Regarding the third March 2021 incident, he admitted that, during an argument, he “flipped the couch” over before placing it back and leaving without further incident. Ind. Ex. 38 at 19-20.

As for the February 2021 incident, the Individual admitted in the SSC Response that he became frustrated during an argument and “grabbed [his ex-girlfriend’s] wrist as she was walking away” so they could finish the “conversation.” Ind. Ex. 38 at 20. She responded by “jerk[ing] her hand away” and his fingernail left a “small mark.” *Id.*; Tr. at 145. He testified that the mark on her wrist resulted from her “snatching” her own hand away, not because he intended to harm her. Tr. at 145. The argument continued, and the Individual “slammed a barstool on the floor,” which damaged the stool. Ind. Ex. 38 at 20. He stated that he apologized and replaced it. *Id.* Finally, regarding the January 2021 incident, the Individual admitted in the SSC Response that during an argument he threw a broom in the opposite direction of his ex-girlfriend. *Id.* at 21. He denied that his action injured her and stated that the referenced blood was from an injury he suffered on an earlier date. *Id.*; *see also* Tr. at 145.

At the hearing, the Individual testified that while many of the allegations recounted in the SSC are “made up” and “false,” some of the information is “not entirely untrue.” Tr. at 143. He admitted breaking furniture, throwing a television remote control, knocking candles off a mantel, “flipping couches,” and similar “immature things.” *Id.* He also admitted to losing his temper. *Id.* He testified that he regretted “allowing her” to “provoke [him] to the point where [he] would say things, call her names.” *Id.* The Individual denied ever physically assaulting or violently grabbing his ex-girlfriend. *Id.* at 143-44. He also testified that his actions were unbecoming of a person with his position and regretful. *Id.* at 144. He confirmed that criminal charges from his most recent arrest are still pending. *Id.* at 148.

The record includes the report that the Psychiatrist produced after evaluating the Individual in early October 2021, which contains the following information. Ex. 11. The Psychiatrist noted that, during the evaluation, the Individual denied any angry or violent tendencies. *Id.* at 64. The Individual reported that he and his ex-girlfriend had unsuccessfully attempted couples counseling. *Id.* at 65. In reference to his arrest for domestic assault, he stated that his ex-girlfriend had been “playing the victim” and had been a “manipulator” who “fabricated things.” Ex. 11 at 66. He stated that she intended to ruin his life. *Id.* He exhibited agitation when describing his current custody battle for his child to the point that the Psychiatrist “attempted to calm him down” by asking

questions about an unrelated topic. *Id.* The Psychiatrist reported that the Individual “seemed to externalize blame and took relatively little personal responsibility for his anger and violence” when describing points of conflict with his ex-girlfriend. *Id.* at 67.

At the hearing, the Individual testified regarding his ex-girlfriend’s alleged efforts to manipulate his behavior. He testified that he realized that she had been attempting to document his behavior to use it against him in July or August of 2021 because, for instance, he noticed her taking pictures of broken items after their “fights.” *Id.* at 181. He described how she used threats to manipulate his behavior. For example, she would require him to allow her to track his location using his cellphone’s GPS, and, if he refused, she would threaten to report his behavior to his employer.⁶ *Id.* at 193. He admitted to giving in to her demands. *Id.* He testified that, in retrospect, he should have refused. *Id.* at 194. He chose to continue the relationship despite his concerns because he wanted to raise his child in a two-parent home. *Id.* at 182.

The Individual’s friend testified that the ex-girlfriend was manipulative and controlling. *Id.* at 80. Similarly, the Individual’s sister testified that the ex-girlfriend has been “very manipulative and dishonest in some of her accusations.” *Id.* at 38. The sister further testified that the allegations that prompted the Individual’s recent 2021 arrest were only made after the Individual initiated custody proceedings for his child. *Id.* at 39. The sister testified that the ex-girlfriend had also harassed the Individual’s current girlfriend’s child through text messages. *Id.* at 51. The Individual’s current girlfriend confirmed the same. *Id.* at 110.

The Individual submitted additional evidence of his ex-girlfriend’s questionable credibility. The record includes a report produced at the end of the earlier-referenced TA that occurred in June 2021. The TA report (“TA Report”) details that the ex-girlfriend told her coworkers that the Individual had been abusive. Ex 8 at 38. The TA Report includes several statements collected from the ex-girlfriend’s coworkers. *Id.* at 40-46. Notably, her supervisor stated that the coworkers expressed concern that the ex-girlfriend had made “false allegations” due to “inconsistencies” in the information she provided. *Id.*

As part of the TA Report’s conclusion, it states that the Individual was “admonished” based on his admissions, he was told that “kicking, throwing, or destroying property was unacceptable” in relationships, and he was told to “discontinue any and all such behavior in the future or risk action against his employment . . . in addition to legal remedies available to [his ex-girlfriend].” *Id.* at 44, 46.

At the hearing, the Individual testified that he plans to communicate as little as possible with his ex-girlfriend as he attempts to gain custody of their child. Tr. at 156. He testified that he will “refuse to raise [his] voice or belittle [or] name call.” *Id.* at 183. He also testified that he will not engage in any type of argument with her because “she will just use it to her advantage.” *Id.* He testified that he has been continuing to receive individual psychological counseling from a treatment provider once or twice a month. *Id.* at 184-85.

⁶ This testimony is corroborated by his friend who testified that he observed this behavior. Tr. at 80; *see also* Ind. Ex. 37 at 97-101.

Turning to the Individual's alcohol use as a security concern, the record contains the following information. During his evaluation with the Psychiatrist, the Individual provided inconsistent information regarding his alcohol consumption. Ex. 11 at 67. The Psychiatrist's report indicates that the Individual changed his initial reported consumption after the Psychiatrist requested that he take an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test to detect consumption, and the Psychiatrist later confirmed that the Individual admitted to a different treatment provider that he consumed greater amounts of alcohol due to being in conflict with his ex-girlfriend. *Id.* The Individual disclosed that he consumed five to eight or more beers on his days off and at least one or two beers with dinner. *Id.* The "shifting responses about his drinking" concerned the Psychiatrist. *Id.* at 73. So did the negative EtG result combined with the elevated PEth result, from which the Psychiatrist concluded that the Individual had engaged in "even more [alcohol consumption] than reported." *Id.* The Psychiatrist diagnosed the Individual with AUD, Mild. *Id.* The Psychiatrist recommended that the Individual participate in a 12-step or similar program and become familiar with a recovery model; that he establish a year of complete sobriety; and that he undergo PEth tests every two months. *Id.* The Psychiatrist gave the Individual a guarded prognosis, given the Individual's "ongoing stresses and sense of alcohol being beneficial for managing his anxiety." *Id.*

At the hearing, the Individual testified that he stopped consuming alcohol in January 2022 to demonstrate that he prioritized his job. Tr. at 154. He also testified that he told the Psychiatrist during the evaluation that, "due to emotional situations," he "had been drinking more than [he] had reported [] during [his] annual [certification] interviews." *Id.* at 150. He explained that he had only begun consuming the increased amount of alcohol since his separation from his ex-girlfriend, which occurred approximately four months before the evaluation. *Id.* at 153. He clarified that he only consumed the reported five to eight beers on a weekend, not every night. *Id.* He also testified that he has never had an "alcohol issue" and he never felt like he "needed to have a drink." *Id.* at 154. He stated that he does not intend to consume alcohol anymore. *Id.* at 164. He also testified that he only received the Psychiatrist's report and recommendations a few weeks before the hearing. *Id.* at 163.

The Individual's current girlfriend testified that she could not recall him consuming alcohol on a weeknight since they began dating in September 2021. Tr. at 109. She also testified that the Individual had not consumed any alcohol since January 2022. *Id.* at 110.

The Psychiatrist testified after observing the Individual's hearing testimony. The Psychiatrist explained that he initially evaluated the Individual's alcohol consumption because he wanted to determine whether alcohol played a role in the Individual's issues, "given the anger, the volatility of [the Individual's] language [] and threatening and so on."⁷ *Id.* at 200. The Psychiatrist testified that he believed "that alcohol did play a role" in the Individual's "very unusual and intimidating kind of behavior." *Id.* at 201. He also opined that the Individual was presently in early remission without being rehabilitated or reformed. *Id.* at 201, 203. The Psychiatrist again recommended a recovery program and counseling to address the Individual's "anger issues." *Id.* at 201-03. The Psychiatrist testified that the Individual did not demonstrate much insight or "motivation

⁷ The Psychiatrist also explained that it is routine to give individuals PEth and EtG tests during DOE evaluations regardless of whether alcohol is initially identified as a basis for concern. Tr. at 200.

perspective” on how his alcohol use may have been a contributor to his relationship issues. *Id.* at 222.

V. ANALYSIS

A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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; and
- (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.

The Individual failed to bring forth sufficient evidence to apply the above mitigating factors to resolve the Guideline G security concerns. Because I rely upon much of the same evidence in analyzing each of the above mitigating factors, the following analysis addresses all of the factors together. First, relatively little time has passed since the Individual stopped consuming alcohol. By the hearing date, he had abstained for approximately five months. The evidence demonstrates that the Individual did not acknowledge a pattern of maladaptive alcohol use because he denied having a problem with alcohol. Furthermore, the evidence does not demonstrate a clear and established pattern of abstinence in accordance with treatment recommendations. The Individual did not complete the treatment recommendations provided by the Psychiatrist because he did not participate in a 12-step or similar program, he did not become familiar with a recovery program, and he did not complete a year of abstinence. Therefore, the record demonstrates that he did not participate in or complete a treatment program. Further still, the Psychiatrist did not provide a positive prognosis at the hearing, nor did the Psychiatrist conclude that the Individual had reformed or rehabilitated his AUD.

I remain concerned regarding the Individual’s alcohol use given that the Individual admitted to using alcohol in the past to address anxiety due to his relationship, the fact that the Psychiatrist

gave a guarded prognosis, and the fact that the Individual is still in the process of resolving issues with his ex-girlfriend related to the criminal charges and custody of their child. The latter indicates that some of the same stressors that caused the Individual to increase his alcohol consumption remain. The fact that the Individual did not have the benefit of the Psychiatrist's recommendations until a few weeks before the hearing, while perhaps true, has no bearing on the ultimate determination I am charged with making: whether alcohol use remains a security concern for this Individual. I do not find that any evidence regarding the frequency of his behavior or the circumstances under which it occurred weighs in favor of mitigation. Accordingly, I find that the Individual has not mitigated the Guideline G security concerns.

A. Guideline J Considerations

The follow mitigating conditions could apply to resolve security concerns based on criminal conduct:

- (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, . . . job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

Based on the record, none of the above mitigating conditions are applicable. After considering the Individual's factual disputes with the description of his behavior toward his ex-girlfriend, the Individual's conduct still illustrates a pattern of concerning judgment. After each separate incident cited in the SSC, he had the opportunity to change his behavior, from his first arrest in June 2020 to the interactions that resulted in his October 2021 arrest. Instead, his conduct continued even after a night in jail and a workplace investigation in which he was admonished and instructed to change his behavior. While the record demonstrates that he stopped breaking and throwing items and physically engaging his ex-girlfriend during arguments after the admonishment, he continued to interact with her in a manner that resulted in her pursuing criminal charges against him. For example, he admitted to sending her messages telling her to kill herself, which she reported to the police.

The record includes evidence that the ex-girlfriend may be an unreliable source of information. The Individual provided a version of his conduct that directly challenges many of the allegations made by his ex-girlfriend. Additionally, the Individual's witnesses described how she attempted to control and manipulate the Individual, which corroborated the Individual's statements regarding

her behavior. And there is evidence that the ex-girlfriend's coworkers doubted the allegations of abusive behavior she recounted to them because of inconsistencies. Furthermore, the timing of her recent allegations, as indicated by the record, coincided with the Individual initiating custody proceedings for their child, arguably providing a possible motive for the allegations. However, the Individual admitted that he engaged in some of the conduct cited in the SSC and Police Report, including damaging his ex-girlfriend's property and touching her during arguments that resulted in a response that indicated the contact was unwelcome. Furthermore, local authorities saw fit to arrest and charge the Individual based on the information they reviewed. That the ex-girlfriend chose to report his conduct at an opportune time does not establish that the allegations are completely false. Given the conflicting testimony and evidence, I cannot know what actually happened during each altercation cited in the SSC, but, based on the information in the record and the following analysis, I conclude that the Individual has not resolved the security concerns generated by his conduct.

Turning first to ¶ 32(a), I do not conclude that sufficient time has elapsed to mitigate the concerns. Some of the concerning conduct occurred less than a year prior to the hearing, and the criminal charges are still pending. Furthermore, the record does not demonstrate that the circumstances were unusual; instead, it appears that the conduct arose out of the Individual's usual pattern of interaction with his ex-girlfriend. The Individual is currently facing criminal charges based on her allegations, and he anticipates having to communicate with her regarding custody of their child. Thus, he will continue to be in a position of having to interact with his ex-girlfriend.

As for ¶ 32(b), there is no evidence in the record to conclude that the Individual was pressured or coerced into committing the various alleged acts listed in the SSC. While he may have been provoked, he is responsible for his conduct, which he admitted included throwing or damaging property, getting into at least one physical altercation, and leaving small marks on his ex-girlfriend's body. Additionally, I find it concerning that the Individual altered his behavior to comply with his ex-girlfriend's demands after she threatened to report his conduct to his employer. This demonstrates that his behavior made him vulnerable to being pressured to take actions that were against his better judgment. By his own admission, he regrets giving into her demands.

Regarding ¶ 32(c), there is reliable evidence to support a finding that the individual committed the various acts that form the basis of the security concern. While he disputes the alleged intent behind some of his actions, he does not deny that he broke property, threw items, and grabbed his ex-girlfriend during arguments, which left small marks or bruises on her body. In addition, the local authorities saw fit to arrest and criminally charge the Individual based on the evidence they received. I therefore conclude that ¶ 32(c) does not apply to mitigate the security concerns.

Finally, regarding ¶ 32(d), I find it does not apply for the similar reasons stated above for ¶ 32(a). Relatively little time has passed since the Individual last allegedly engaged in criminal conduct. While he has been participating in counseling, I do not conclude that he has rehabilitated his behavior, and the evidence of his service to this country does not overcome my concern derived from the serious criminal charges pending against him. I also take note of the Individual's testimony that he will not engage in any further arguments with his ex-girlfriend because she will just "use it to her advantage." That statement fails to acknowledge that his behavior itself is concerning, not the fact that she wields it against him. I remain concerned by the evidence in the

record and all of the uncertainty I find therein. Accordingly, I conclude that the Individual has not mitigated the Guideline J security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G and 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 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 SSC. 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals