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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: October 4, 2022) Case No.: PSH-23-0006
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Issued: January 19, 2023

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “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 possession of a security clearance. The DOE Local Security Office (LSO) discovered information regarding the Individual that includes numerous allegations of harassment and abuse, which resulted in eight separate Orders of Protection filings against the Individual. Based on information described in more detail below, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline J of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the

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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing in December 2022. At the hearing, the Individual testified on his own behalf. The Individual submitted one exhibit prior to the hearing, marked Exhibit (Ex.) A,² and a post-hearing exhibit, marked Ex. B. The LSO submitted sixteen exhibits, marked Exs. 1 through 16.³ The LSO did not call any witnesses.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1. 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:

- A. On July 8th, 2021, a Petition for an Order of Protection from Domestic Abuse was filed against [the Individual] by his ex-wife [] The petition reflected that [the Individual] had break-checked [sic] his ex-wife, and communicated threats to her, her son, her boyfriend, and members of her family. It was also reported that [the Individual] was verbally and emotionally abusive.
- B. On April 23rd, 2018, a Petition for an Order of Protection from Domestic Abuse was filed against him by his ex-wife [] The petition reflected that [the Individual] had repeatedly harassed his ex-wife's daughter after being instructed not to have contact with her.
- C. On March 28th, 2018, a Petition for Order of Protection from Domestic Abuse was filed against him by his ex-wife [] The petition reflected that [the Individual] had verbally harassed the daughter of his ex-wife on several occasions.
- D. On February 27th, 2018, a Petition for Order of Protection from Domestic Abuse was filed against him by his ex-girlfriend [] The Petition reflected that [the Individual] had, on various occasions, kicked and punched his ex-girlfriend. The Petition also reflected that he was accused of pulling a firearm out on his ex-girlfriend and hitting her multiple times.
- E. On February 12th, 2018, a Temporary Order of Protection was filed against him by his ex-girlfriend [] The Temporary Order of Protection reflected that [the Individual] had

² Ex. A is comprised of several discrete documents combined in a single, 61-page PDF workbook.

³ The LSO's exhibits were combined and submitted in a single, 260-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.

punched, kicked, and pulled her hair on several occasions. The report also reflected that his ex-girlfriend was afraid of him hurting her because he was in possession of firearms.

- F. On January 23rd, 2015, a Petition for an Order of Protection from Domestic Abuse was filed against him by an acquaintance [] The Petition reflected that [the Individual] sexually assaulted her on December 10th, 2014. The incident was recorded with the [local police department] as Criminal Sexual Penetration on January 20th, 2015.
- G. On July 1st, 2014, a Petition for an Order of Protection was filed against him by his ex-wife [] . . . on behalf of their son whose therapist requested the petition be filed. The Petition reflected that on June 30th, 2014, [the Individual's] son informed his mother that [the Individual] had slapped him in the face, spanked him, and pinched his butt.
- H. On December 7th, 2009, an Order of Protection was filed against him by his ex-wife [] The Order reflected that [the Individual] grabbed her by the arm and held her. The Order also reflected that he had previously cornered her in their bathroom and verbally abused her. Additionally, his ex-wife reported that [he] threatened to kill her and himself, abused her daughter, and that a firearm had been involved in previous instances of domestic abuse.

Ex. 1. 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

Regarding the July 2021 Petition for Order for Protection, the record indicates the following. In early July 2021, the Individual met with his ex-wife⁴ in order to exchange custody of their twelve-year-old son. Tr. at 39, 46. After the exchange, the Individual left the location in a vehicle with his son, and the ex-wife and her fiancé also left the location their vehicle. Ex. 6 at 31. At some point while leaving, the Individual's vehicle ended up in front of the ex-wife's vehicle, and the Individual engaged his brakes suddenly. *Id.* In response, the ex-wife's fiancé exited their vehicle and approached the Individual, and the Individual then drove off and contacted the local police. Ex. 6 at 31; Tr. at 39-40. The record includes a district court opinion issued after a hearing on the petition in which the court found that the Individual spoke with a police officer shortly after the above incident. Ex. 6 at 31. The Individual reported the above exchange as a "road rage incident . . . initiated by [the ex-wife and her fiancé]." *Id.* The officer reported that while he and the Individual were speaking the "child appeared distraught, was crying and shouted out that what his father was saying was not true and that [the Individual] started the incident." *Id.* Lastly, the officer reported that he was "concerned that [the Individual] presented a threat to the child because [the Individual] was uncooperative, threw the officer's card at him, and was acting very angry." *Id.*

The Individual testified that the court's record of the incident was accurate, but he explained that his ex-wife and her fiancé instigated the incident by "flipping [him] off," which he observed while waiting for his son at the exchange. Tr. at 40-41. He testified that they continued "flipping [him] off through the mirrors" as he drove from the exchange location, that their vehicle got "right behind [him,]" and they continued getting "closer and closer" until he had to stop at a turning lane and put on his brakes, which "might have looked like [he] check braked them [sic]." *Id.* at 41-42. He said that action prompted the fiancé to approach the Individual's vehicle in a manner that made it look like the fiancé wanted to fight, so the Individual drove off and called the police.⁵ *Id.* at 42. He testified that he basically defended himself from an assault. *Id.* at 157. The record reflects that the court issued an Order of Protection against the Individual for a period of one year to end in August 2022. Ex. 6 at 28.

The Individual testified that his ex-wife has hated him ever since he divorced her in 2010 because she blames him for "split[ting] the family up." *Id.* at 43, 45. The Individual testified that his ex-wife initiated the first "restraining orders" against him days after he left her, and she has always wanted custody of their son. *Id.* at 43-44. He also testified that his ex-wife has always been the primary custodian, and she has been working to turn his son against him for years.⁶ *Id.* at 44, 49. He explained that his son characterized him as the aggressor to the police due to influence from

⁴ This is the Individual's second ex-wife. His first ex-wife provided a letter that stated she and the Individual were together for over twenty years and remained friends after their divorce. Ex. A at 59.

⁵ The Individual testified that his ex-wife was friends with the local police and at least one of the judges who adjudicated the various orders for protection that were issued against him. Tr. at 43, 49. He did not indicate that the reporting officer was a friend of his ex-wife.

⁶ The Individual also testified that his ex-wife has a history of cutting the father of her children out of her children's lives. Tr. at 61.

the ex-wife.⁷ *See id.* 46-47. He also explained that he prevented his son “from looking out the mirrors” when the ex-wife and her fiancé were making derogatory hand gestures while driving because the Individual “didn’t want [his son] to see what his mom and . . . [the fiancé were doing]” because the fiancé is “a good man.” *Id.* at 48. He explained that the day of the above incident is the last time he saw his son. *Id.*

Regarding the April 23 and March 28, 2018, Petition for an Order of Protection from Domestic Abuse filed against the Individual by his ex-wife for repeatedly harassing his ex-wife’s daughter, the Individual denied the version of events contained in the petitions and explained that both petitions derive from the same incidents. Ex. 2 at 11; Tr. at 51. The petition is included in the record and indicates that he approached his ex-wife’s seventeen-year-old daughter during a basketball game and persisted in engaging her even though she asked him to leave her alone. Ex. 9 at 83. The petition also recounts several instances of unwanted behavior by the Individual toward the ex-wife’s daughter, including asking the ex-wife’s daughter to secretly meet him at a restaurant, asking her to contact him at his old phone number “so her mom won’t know,” forcing an unwanted hug, and stating that he was “going to attend her graduation party, despite not being invited.” *Id.* at 83. The petition also recounts that the ex-wife’s daughter consistently asked the Individual to “leave her alone.” *Id.* The Individual testified that on the day of the basketball game he talked with his ex-wife and her daughter, who used to be his stepdaughter when he and his ex-wife were married. Tr. at 51, 52. He denied that she ever told him to leave her alone. *Id.* at 52. He denied that he asked the ex-wife’s daughter to meet him at a restaurant. *Id.* at 53. He testified that he did tell his ex-wife’s daughter, while his ex-wife was “sitting right there,” that he would be available if she ever wanted to talk or needed anything. *Id.* at 53-54. He denied several other allegations contained in the petition. *Id.* at 55-57. He testified that his ex-wife pursued the 2018 protective orders because he refused to agree to change his son’s visitation date so that the son could be present at the ex-wife’s daughter’s graduation party. *Id.* 58-59. He also testified that the ex-wife wanted to prevent him from going to the graduation party. *Id.* at 60. Finally, he Individual testified that he has not seen his ex-wife’s daughter since 2018. *Id.* at 159. He explained that he even refrains from going to the city where she works because he is “trying to just stay away, because these [] allegations come up.” *Id.*

The record contains the February 27, 2018, Petition for Order of Protection from Domestic Abuse that was filed by an ex-girlfriend. Ex. 13 at 160. The record also contains the February 12, 2018, petition, which appears to be based on similar allegations but filed in a different jurisdiction. *Id.* at 172, 175. Therein, the ex-girlfriend alleged that he physically assaulted her on several occasions, “pulled out a firearm,” and made “comments about people ‘disappearing.’” *Id.* at 165-66. He testified that he last saw this ex-girlfriend in approximately 2017. Tr. at 63. He denied the allegations contained in the petition and stated that he too had filed a petition against the ex-girlfriend days before to protect himself because his ex-girlfriend had called him upset because her vehicle had been broken into and blamed him. *Id.* at 63-64, 65, 67. He testified that the ex-girlfriend “could never let peace just happen.” *Id.* at 69. He testified that the ex-girlfriend wanted to jeopardize his career because he ended their relationship. *Id.* at 70. He testified that their lawyers had a discussion, and the case was dismissed when the ex-girlfriend failed to show up for the court

⁷ The Individual also described that the son may have been acting according to some sort of plan that included some of the officers because, for instance, the son only became upset when, during the Individual’s interaction with the reporting police officer, the son recognized a police officer who is friends with his ex-wife. Tr. at 48.

date. *Id.* The record contains orders that dismissed the petitions filed by the Individual and the ex-girlfriend based on their agreement to withdraw their respective petitions. Ex. 13 at 171, 185. The Individual testified that in early 2022 his ex-girlfriend contacted him to take care of an issue in her home that required his professional experience. Tr. at 146. He testified that he agreed and completed the job for free, despite the fact that she had accused him of abusive conduct, because he “believe[s] in forgiving people.”⁸ *Id.* at 148.

On January 23, 2015, a female acquaintance filed for a Petition for an Order of Protection from Domestic Abuse against the Individual and accused him of sexual assault. *Id.* at 75. The acquaintance also reported his conduct to the police. *Id.* The petition and the police report both describe that the Individual met the acquaintance at a restaurant parking lot for dinner in December 2014. Ex. 13 at 115, 120-121. Instead of going into the restaurant, the Individual suggested they drive to a different location, and when they arrived there, he sexually assaulted the acquaintance against her protest. *Id.* The acquaintance also reported that she had not seen the Individual in the preceding twenty-seven years. *Id.* at 120.

The Individual testified that he first met the acquaintance when he was approximately twenty years old. *Id.* at 76. He testified that they “had been in an on and off relationship for many years[.]” *Id.* He said they reconnected at some point preceding the 2015 incident, and she agreed to go to dinner with him some time after initially declining to give him her number. *Id.* at 77-78. He also testified that he could not recall the details as to why they went to the other location instead of eating at the restaurant because it “was so long ago[.]” *Id.* at 79. He testified that they had consensual sex. *Id.* at 81. He said that they “had a great time” until they left, and they “laughed the whole entire time [they] were with each other.” *Id.* at 89. He testified that they had a history of connecting and having consensual sex and then not seeing each other for several years at a time. *Id.* at 88. He testified that he recalled receiving the order for protection but denied being contacted by the police. *Id.* at 80. When asked why the acquaintance would have accused him of sexual assault, he testified that she had a gambling problem and speculated that she may have been trying to get money from him. *Id.* at 81-82. He also suggested that the nature of their relationship may have motivated the acquaintance to withdraw the case rather than have it come to light. *Id.* at 97-98. He testified that the acquaintance dismissed or closed the case a few weeks before the court date. *Id.* at 82. He also confirmed that she never asked him for money. *Id.* He testified that he never saw the acquaintance again despite his attempts to “reach out to her” and “ask her to give [him] a call.” *Id.* at 88.

The police report from the above incident indicates that the acquaintance’s sister told the investigating officer that the Individual attempted to sexually assault her too when they were both teenagers. Ex. 13 at 121. At the hearing, the Individual denied assaulting the sister and testified that he was not in the area when it was alleged to have occurred. Tr. at 87.

Regarding the July 1, 2014, Petition for an Order of Protection filed against the Individual by his ex-wife on behalf of their son, the Individual again denied the allegations. Tr. at 100. He testified that he never physically disciplines his son; instead, he removes his son’s access to sources of entertainment such as video games. *Id.* at 100-01. He believes that his ex-wife pursued the

⁸ The Individual’s Ex. B is several screen shots of a text message conversation confirming the details of his agreement to do the home repair. Ex. B. However, the displayed name at the top of the captured screen is not the ex-girlfriend’s name, while the text of the conversation does include the ex-girlfriend’s first name. *Id.*

protection order because he had obtained permission to take their son out of state to attend a sporting event in the summer of 2014. *Id.* at 104. He testified that this trip was the first and last time he asked to take his son on vacation because getting permission was “like going through restraining order after restraining order.” *Id.* The record indicates that the court denied issuing a permanent restraining order on the petition citing insufficient evidence. Ex. A at 7.

Regarding the December 7, 2009, Order of Protection filed against him by his ex-wife alleging various instances of physical abuse and threats, the Individual denied the allegations and testified that his ex-wife filed the petition after he “left her” on November 29 because of her ongoing verbal abuse. *Id.* at 108, 110. He testified he had a major operation on December 1, and while he was recovering, he woke up to his ex-wife removing items from his house which she claimed belonged to her. *Id.* at 108-09. In response, the Individual contacted the police and had her removed from his property, and he testified that she retaliated by filing the December 7 petition. *Id.* at 109. In support of his testimony, he noted that his ex-wife did not file any petitions prior to that incident. *Id.* at 109-10. The Individual testified that the petition that was filed in 2009 was “tossed out.” *Id.* at 121-123. The record contains a court order that indicates the petition was dismissed, and the Individual thereafter remained under a “stipulated order of protection” as part of their petition for dissolution of marriage. Ex. 14 at 224.

Lastly, the record contains two letters from the Individual’s work colleagues. The first letter indicates that the Individual is “hard working, reliable, dependable, honest and trustworthy.” Ex. A at 57. The second letter states that he is a good worker and punctual. *Id.* at 58.

V. ANALYSIS

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline J include:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

After reviewing the record in this case, I conclude that none of the mitigating factors apply to resolve the Guideline J security concerns for the following reasons.

Regarding ¶ 32(a) and ¶ 32(d), I will analyze them together because I rely on similar facts to conclude that they do not apply to resolve the security concerns. The most recent order for protection was issued approximately a year and a half before the hearing date, and it expired four months before the hearing. Relatively little time has elapsed since then, especially considering the Individual's record of being accused every few years of engaging in criminal conduct toward individuals with whom he has a relationship. Accordingly, I do not conclude that the passage of time is sufficient to demonstrate that his behavior is unlikely to recur or does not cast doubt on his reliability, trustworthiness, or good judgment. Furthermore, given the repeated nature of the allegations, the evidence in the record does not demonstrate that the criminal conduct arose from unusual circumstances such that it is unlikely to recur. Lastly, I conclude that the record does not demonstrate successful rehabilitation because the record does not contain evidence of restitution, job training or higher education, or significant constructive community involvement; and my above findings substantially outweigh the impact of the Individual's reported good work performance and his compliance with the terms of the most recent order for protection.

As for ¶ 32(b), the record does not include evidence that establishes that the Individual was pressured or coerced into committing the instances of conduct listed in the SSC.

Lastly, ¶ 32(c) does not apply to resolve the security concerns. The record contains several allegations, from multiple sources, that the Individual engaged in abusive, harassing, and threatening behavior. The number, frequency, and similar nature of the allegations against the Individual weigh in favor of finding that there is reliable evidence that he committed the underlying acts despite his excuses and explanations. Regarding the most recent instance that occurred during the custody exchange, the Individual maintained that his conduct was justified. I do not find his testimony creditable given the record of the court's findings, his admitted actions, the related police report, and the undisputed fact that his son characterized him as the instigator. In each remaining instance alleged in the SSC, the Individual denied or provided an explanation of the incident to remove his culpability. Without more corroborating evidence, I do not accept that so many allegations of similar behavior, from multiple independent sources, are all false or unreliable.

For the reasons stated above, I find that the Individual has not resolved 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 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