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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: November 23, 2022 ) Case No.: PSH-23-0030  
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Issued: April 21, 2023

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “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 not be restored.

**I. Background**

On September 10, 2022, the Individual text messaged his former girlfriend (the Ex) to wish her a happy birthday. Exhibit (Ex.) F at 1. In the text message exchange that followed, the Individual asked the Ex if he should go to her birthday party three times. Ex. F at 1–2. After the Individual asked for the third time, the Ex responded by stating: “Are you gonna behave? And act right and not start shit with anyone?” Ex. F at 2. That night, the Individual attended the Ex’s party, at which an exchange of gunfire occurred leaving two adults and three teen-aged children with gunshot wounds. Ex. C at 1. According to a newspaper account of the incident dated September 16, 2022 (the Article), witnesses “accused [the Individual] of firing multiple shots amid a melee that began when the guest of honor – [the Ex] – tried to kick him out of the party.” Ex. C at 1. The Article further reported that witnesses told police that the gunfire “followed the arrival of an uninvited ex-boyfriend.” Ex. C at 1. The Article further reported that the Ex had alleged, in an affidavit filed in court, that she and the Individual had “ended a relationship more than 10 months ago” and that the Individual was not invited to her party. Ex. C at 2. She further alleged, in this affidavit, that “at some point during the party, she saw [the Individual] pull out a pistol and ‘cock it back.’ Then she heard gunshots – 15 to 20 rounds fired ‘in a straight direction.’” Ex. C at 2. She alleged that

<sup>1</sup> Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

the Individual fired his pistol at partygoers as they fled. Ex. C at 2. The Article stated that “a couple of young witnesses told police ‘drama’ had erupted ‘between multiple males at the party who were fighting over [the Ex].’” Ex. C at 2. The Article indicated that “Investigators know that there were several weapons at the party fired by more than one person” and that “the identity of who fired which firearm is still being investigated at this time.” Ex. C at 1. The Article further stated: “Police recovered at least 66 casings” that included shells from 9mm, .45 Auto, and .40 S&W caliber weapons. Ex. C at 1. The Article indicated that the matter remained under investigation. Ex. C at 2.

On September 15, 2022, a state magistrate issued a warrant for the Individual’s arrest based upon charges resulting from the September 11, 2022, incident. Ex. 4 at 1–4. That warrant charged the Individual with four counts of Aggravated Battery with a Deadly Weapon; five counts of Aggravated Assault with a Deadly Weapon; three counts of Abuse of a Child; and one count of Negligent Use of a Weapon. Ex. 4 at 1–4. One of the counts alleged that the Individual “did unlawfully assault or strike” the Ex and therefore committed an aggravated assault with a deadly weapon. Ex. 4 at 4. On September 16, 2022, police arrested the Individual.<sup>2</sup> Ex. 8 at 2; Ex. 6 at 3. The Individual spent the next 23 days in jail. Tr. at 37.

On November 7, 2022, a state prosecutor issued a Nolle Prosequi without prejudice dismissing the charges filed against the Individual. Ex. 5 at 1-3. The Nolle Prosequi states in pertinent part:

1. The investigation is ongoing.
2. The Defendant was arrested on or about September 15, 2022.
3. The events giving rise to the Amended Criminal Information involve over 100 people.
4. Since that time, there have been other potential suspects identified.
5. There are still key interviews needing to be completed with witnesses.
6. Since there were several juveniles involved, adherence to juvenile interview requirements need to be satisfied.
7. There have been additional events linked to the Defendant and co-Defendant that require further investigation.
8. There are still ballistic and DNA testing results pending.
9. The lead investigator is not available on November 8, 2022.

Charges will be re-filed at a later date.

Ex. 5 at 2.

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<sup>2</sup> The SSC erroneously stated that the Individual was arrested on September 11, 2022.

After receiving information indicating that the Individual had been arrested, charged, and jailed for the charges set forth in the September 15, 2022, warrant, 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 to resolve the substantial doubt regarding his eligibility to hold a security clearance.<sup>3</sup> *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), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-23-0030 (hereinafter cited as "Tr."). The DOE Counsel submitted nine exhibits marked as Exhibits 1 through 9. The Individual submitted seven exhibits marked as Exhibits A through G.<sup>4</sup>

Exhibit A is a written statement authored by the Individual on March 4, 2023, in which he states, in pertinent part:

On September 10, 2022, I . . . attended [the Ex's] birthday party. She had invited me to the party earlier in the week through a text message.<sup>5</sup>

I attended her birthday with [the Friend]. We showed up at the party around 10 pm. My intent was to wish her a Happy Birthday. At approximately 12 am a physical fight broke out with friends of [the Friend] and some other attendants of the party. I saw that [the Friend] went to break up the fight. While [the Friend] was attempting to stop the fight between his friends and some other guests, he was physically attacked by several males.

I then proceeded to protect [the Friend] from being battered. As I was trying to protect [the Friend], several males began to hit me all over my body, to include my head area. At this point [the Friend] got hit in the face with a gun and had the barrel of the firearm pointed directly at [the Friend's] head. While the male was still pointing the firearm at [the Friend] we heard gunshots from behind us and we started running out of fear that we might be shot. To this day we are unsure if the gunshots were people shooting in the air or if they were directed at people attending the party.

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<sup>3</sup> The LSO also received a report from the Federal Bureau of Investigation (FBI) indicating that police had arrested the Individual on September 16, 2022, for Failure to Appear on a Felony Charge. Ex. 9 at 9–11. That charge does not appear in the Arrest Warrant or in the Court Case Lookup for the Individual included in the record. Ex. 4 at 4; Ex. 7 at 3. The FBI Report pertains to a person with the same name, social security number, and date of birth as the Individual. Ex. 4 at 2; Ex. 9 at 9–11. However, the FBI report does not mention any of the charges appearing in the Warrant for Arrest. The Individual did not address this charge during the pendency of this proceeding.

<sup>4</sup> Exhibits C through G were each submitted after the hearing with my permission.

<sup>5</sup> The Individual arrived at the party on September 10, 2022, around 10 p.m. Tr. at 17–18. The gunfire is believed to have occurred after midnight on September 11, 2022. Ex. C at 1.; Ex. B at 1.

Once we left, we went back to [an acquaintance's] house where I stayed the night. On the date of September 14, 2022, I missed a call from [a detective (the Detective)]. I did not answer the phone because I was on shift. [The Detective] then left me a message stating that my name came up in a pending investigation where the incident took place on September 11, 2022. The message stated that if I did not go in for a statement, he would have to talk to my employer to get ahold of me.

[The Detective] also called my older sister . . . that day and told her that he was trying to get a hold of me and to have me get in contact with him. After hearing this information, I decided to hire an attorney to protect my job and to have legal representation while giving a statement or being questioned. I hired [an attorney (the Attorney)]. . . . My attorney . . . told [the Detective] if he sought an arrest warrant that [the Attorney] would personally turn me in to [the] Police Department.

On Friday September 16, 2022, a search warrant was issued for my parent's house, where I reside, and also a search warrant for my sister's house. There was also a warrant for my arrest issued the same day. I was arrested at my parents' house with no incident. After my arrest, [the Detective] tried to illegally obtain video surveillance from my parents' house considering it evidence. On September 27, 2022, I had a pretrial hearing to which I plead NOT guilty. On September 27, 2022, I was released with no bail, no house arrest, and no ankle monitor. The only condition that [the] Judge . . . had given me was to stay away from the witnesses.<sup>6</sup>

Due to clerical errors, I stayed an additional five days and was released on October 4, 2022. On October 12, 2022, I went to the police station to pick up my phone. After I got my phone, I received a call from my attorney . . . stating that [the Detective] contacted him and asked if I would be willing to go to the . . . Police Department to view a cell phone video of an incident that took place on September 10, 2022, during the party. [The Detective] stated to my attorney that I may be a victim of crime. I complied with the request. In this video, I pointed out which individual was me with empty hands raised and where there was a gun pointed at [the Friend]. On November 8, 2022, at 2:00 pm I was scheduled to be in the court; however my attorney contacted me the morning of and stated that charges were dismissed.

On December 12th, 2022, I went to speak with the [Human Reliability Program (HRP) Psychiatrist], She approved my fitness for duty and recommended to see an outside therapist, which I am still currently seeing.

Currently, [the Detective] is being investigated by the FBI for Fabrication of Evidence during the search warrant that was served to my parents' home on September 16, 2022. Video evidence was to my Attorney and FBI.

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<sup>6</sup> The Agreement to Comply with Conditions of Release for Pretrial Services Supervision signed by the Individual indicates that he was required to comply with eight other conditions including a requirement that he report to "Pretrial Services." Ex. 4 at 8-9. The Order for Release signed by the Judge indicates that the Individual was ordered to "check in" with "Pre-Trial Services with Level 3 supervision." Ex. 4 at 7.

Ex. A at 1–2.

Exhibit B is a “Case Supplemental Report” (CSR) filed on September 12, 2022, by a police officer who was sent to a local hospital to interview two male shooting victims from the party. Ex. B at 1. One of the victims (Victim One) indicated his wound was “street justice.” Ex. B at 1. The CSR states in pertinent part:

[Victim One] informed me he was at a birthday party when he observed an unidentified male in a white hoodie and white hat who was waving a gun around. [Victim One] informed me he tried to disarm the unidentified male to prevent a shooting due to knowing numerous people at the party were armed with firearms. [Victim One] informed me as he was attempting to disarm the unidentified male he was physically prying the unidentified male’s fingers from the gun. [Victim One] informed me at one point during the struggle for the gun the trigger was depressed which caused [Victim One] to be shot in the foot. [Victim One] informed me upwards of twenty (20) people then drew firearms and began firing their firearms. [Victim One] described the gunfire as sounding like a “battlefield.” [Victim One] informed me he quickly jumped into a bush for safety, but was unable to provide any further information.

Ex. B at 1–2.<sup>7</sup>

Exhibit C is the newspaper article dated September 16, 2022, referenced above. The article identified the Individual as the man who was arrested. Ex. C at 1.

Exhibit D is a newspaper article dated October 14, 2022. This article indicated that a second suspect in the September 11, 2022, shooting had been arrested. Ex. D at 1.

Exhibit E is an article from a local television station’s website entitled, “Second suspect arrested in connection to . . . birthday party shooting.” That article states that the second suspect, “. . . pulled a gun, hit a person with the gun, and pointed it at another person who fled. He’s been charged with one count of aggravated battery with a deadly weapon and one count of aggravated assault with a deadly weapon.” Ex. E at 2.

Exhibit F consists of two screen shots of the text message discussion between the Individual and the Ex on September 10, 2022. It is not clear whether these screen shots are a complete account of the text message discussion. The screen shots contain the following exchange:

Individual: Happy birthday . . .

Ex: Thank you! [Heart emoji] I think you need to step up your birthday text cause the one I sent you was amazing

Individual: What do you want for your birthday

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<sup>7</sup> A newspaper account of the shooting indicates that Victim One “told police he was shot in the left foot as he was trying to wrangle a gun from a friend and it discharged, the arrest warrant affidavit says. His friend had brandished the weapon ‘because other people at the party had their guns drawn out,’ [Victim One ] said[.]” Ex. C at 2.

Ex: Mmm flowers [smiling face with hearts emoji]

Individual: I could only give you birthday sex. Nah I'm playing but do you miss me

Ex: I had that for the past 2 years I want something else. [Individual's full first name] what do you think silly :(

Individual: If you miss me then do you want me to go to your party if not then?

Ex: Act right don't be an idiot. Don't say shit like that Fr

Individual: Soo? Is that a yes go or a no fly zone?

Ex: What if I act like an idiot I don't want you to see me like that. I usually stop taking shots at 15 but I'm 18 today so I gotta stop at 18.

Individual: That's not my question

Ex: Are you gonna behave? And act right and not start shit with anyone

Individual: Imma well behaved boy bby

Ex. F at 1–2.

Exhibit G consists of two videos submitted by the Individual that he claims are from his parents' home's video surveillance system. The Individual asserted, "Attached is the video of [the Detective] dropping the 40 caliber casing." March 19, 2023, Email transmitting Exhibit G to OHA's Docket at 1. The two videos show at least eight police officers dressed in tactical gear approaching a building. Each video appears to be the same occurrence shot from two different angles. I could not discern any of the persons in tactical gear dropping anything.

On March 19, 2023, the Individual submitted an email message with four web links that he wished to have considered as part of the record. On March 20, 2023, OHA's Docket contacted the Individual by email stating, "OHA is not able to access the files with links, please forward each link in a separate email if possible. Some file hosting services are blocked in the Department of Energy, and this is one of them. Please resubmit your exhibits." Email dated March 20, 2023, from OHA Docket to Individual. The Individual never resubmitted this information.

## **II. The Summary of Security Concerns**

The Summary of Security Concerns (SSC) attached to the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline J (Criminal Conduct), citing the Individual's arrest and the charges set forth in the September 15, 2022, arrest warrant. This information adequately justifies the LSO's invocation of Guideline J. Guideline J provides that "[c]riminal

activity creates doubt about a person's judgement, 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. "[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" can raise a disqualifying security concern under 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 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 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. Hearing

The Individual was the only witness at the hearing. He testified he had previously dated the Ex for three years, and they "were still in good communication." Tr. at 13. The Individual testified that the Ex had called him about a week before the party to invite him to the party and that he had exchanged text messages with the Ex on the day of the party. Tr. at 13–15. The Individual claimed that the Ex was "a little bit flirtatious with me" during this text conversation and wanted him to get something to eat with her. Tr. at 15. He attended the party with the Friend. Tr. at 13. The Individual testified that, before he arrived, he did not anticipate any problems at the party. Tr. at 17. He testified that a lot of people in his community "believe in the second amendment" and carry firearms with them. Tr. at 17. The Individual described himself as "a big advocate of the second amendment" and noted that he has "a lot of friends that have died to gun violence." Tr. at 21. The Individual claimed that he spoke with the Ex to wish her a happy birthday at the party and denied that she had asked him to leave. Tr. at 18. The Individual testified that as he was talking with a fellow partygoer, he saw the Friend get into a shoving match with three people. Tr. at 19. He claimed that he went to assist the Friend and was hit in the back of his head. Tr. at 19. At this point, he claims he heard the first gunshot and that he and the Friend "just got back in his car and we left." Tr. at 19. The Individual testified that he and the Friend then went to a nearby

acquaintance's home where they spent the night. Tr. at 24. The Individual admitted that he brought a gun to the party for self-protection. Tr. at 20–21. That gun has been confiscated by the police along with several other weapons. Tr. at 20–21. The Individual wore that gun in a holster, where it was visible. Tr. at 21–22. The Individual wears this gun wherever he is allowed to. Tr. at 22. The Friend was not armed at the party. Tr. at 22. He does not know who fired the shots. Tr. at 22–23. He believes he heard 20 to 30 shots. Tr. at 24. He was not sure how many people were firing the shots. Tr. at 24. Other than when he tried to assist the Friend, the Individual was not involved in any disputes at the party. Tr. at 25. The day after the party, a friend called to tell him that people blamed him for the gunshots. Tr. at 26. When the police asked to speak with him, he retained counsel. Tr. at 30. The Individual has not made a statement to the police. Tr. at 31.

The Individual testified that even though he offered to surrender himself, the police used a SWAT team to arrest him at his parent's home. Tr. at 32–33. The police executed a search warrant for his parent's home and confiscated all his and his parent's handguns, including the gun he wore at the party, as well as their ammunition. Tr. at 34. The police have not returned those guns. Tr. at 34–36. The Individual repeatedly claimed that his parents' video monitoring system caught a police detective dropping a .40 caliber shell casing on his parent's yard. Tr. at 36, 54, 60. The Individual claimed he had a copy of the video. Tr. at 55. The Individual spent 23 days in jail before he was released. Tr. at 37. He again claimed his jail stay was extended by a week because of a clerical error. Tr. at 38–39. He testified that he was released without bond. Tr. at 40. He claimed that he was wrongfully accused by a detective who wanted to make a name for himself in a high-profile case. Tr. at 41. The Individual testified that "I'm real kind and generous, so I don't see anybody having a problem with me." Tr. at 41. Another person (the Codefendant) was arrested in connection with the shooting, after the Individual was released from jail. Tr. at 43. The Individual testified that the police questioned him about the Codefendant and showed him a cell phone video showing the Friend getting pistol-whipped by the Codefendant. Tr. at 43–45. The video also showed someone with a gun out and the audio contained the sound of a gun being cocked, a round being placed in the chamber. Tr. at 45. The Individual testified that the last two seconds of the video showed him with his hands at his side. Tr. at 45. The Individual thought that the video had been edited but was not sure. Tr. at 45–46. He does not know who captured the video. Tr. at 46. The Individual testified that the police investigation of the incident remains ongoing. Tr. at 46. When the Individual was asked why the Nolle Prosequi refers to "additional events linked to the defendant" the Individual claimed that he has no clue. Tr. at 46–47. The Individual testified that his attorney is trying to get the Nolle Prosequi re-written or expunged. Tr. at 48. The Codefendant has been released from jail. Tr. at 49. The Individual has not had any contact with the Ex since the party. Tr. at 49–50. The HRP Psychologist referred the Individual to therapy because the incident was "a traumatic event." Tr. at 50. He is still attending that therapy. Tr. at 51. The Individual stated that 67 rounds were fired but only five people ended up shot. Tr. at 52–57. The Individual claimed that his attorney contacted the state police's internal affairs unit to investigate. Tr. at 54–55. His attorney also supplied him with a copy of Exhibit B. The Individual testified that Exhibit B is that only document that the Individual's attorney supplied him with. Tr. at 55. The Individual stated that he had not asked his attorney for all records that might have provided more information about the shooting. Tr. at 57. The Individual stated that he thought that the police detective was suspicious of him because he hired an attorney. Tr. at 58. The Individual testified that the results of the ballistics testing that had been performed on his guns had not been released yet, but that he was confident that they would help him since he had not



fired any shots at the party. Tr. at 60. The Individual claimed that the charges against him were “false allegations.” Tr. at 61.

The Individual’s occupation requires that he carry a sidearm and requires him to receive training in its use and to regularly demonstrate proficiency in its use. Tr. at 64. Prior to the party, he believed that he and the Ex were on good terms. Tr. at 65. When the Individual was asked why the Ex would have said he was not invited to the party, he speculated that she was trying to protect “somebody else who may have shot somebody.” Tr. at 49. He could not see any reason why she would have accused him of the shooting. Tr. at 66. The Individual testified that the Ex’s false accusation is one of the topics that he and his therapist discuss. Tr. at 66. The Individual testified that he never removed his gun from its holster at the party. Tr. at 68. He further testified that he did not fire any shots at the party. Tr. at 68. He testified that he has never been in trouble with the police before, except for “a few tickets.” Tr. at 68–69.

## V. Analysis

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns arising under Guideline J. Only one of these conditions is relevant to the present case.<sup>8</sup> That condition, set forth at ¶ 32(c), provides that an individual may mitigate security concerns raised under Guideline J if they can show that there is “no reliable evidence that the individual committed the offense.” Adjudicative Guidelines at ¶ 32(c).

The warrant issued for the Individual’s arrest on September 15, 2022, indicates that a judicial official found that probable cause existed that the Individual committed the offenses alleged in the arrest warrant. Moreover, the newspaper articles submitted by the Individual show that police had submitted at least one affidavit to the court from an eyewitness who stated that she had observed the Individual pulling out a pistol, cocking it back, and firing at fleeing partygoers. This information constitutes reliable evidence that the Individual committed the offenses cited in the warrant. While the charges set forth on the arrest warrant were retracted by the issuance of the November 7, 2022, Nolle Prosequi, the Nolle Prosequi does not fully exonerate the Individual. Several statements in the Nolle Prosequi indicate that the allegations set forth in the warrant continue to raise concerns about the Individual’s involvement in a mass shooting incident. Specifically, the Nolle Prosequi states: “[t]he investigation is ongoing,” “[t]here have been additional events linked to the Defendant and co-Defendant that require further investigation,” “[t]here are still ballistic and DNA testing results pending,” and “[c]harges will be re-filed at a later date.” Ex. 5 at 2. By issuing the Nolle Prosequi without prejudice, the prosecutor reserved the right to further prosecute the Individual for the events that occurred on September 11, 2022. If the prosecutor issued the Nolle Prosequi because evidence was uncovered suggesting the innocence of the Individual, that evidence does not appear in the record of the present proceeding.

The exhibits and testimony submitted by the Individual in the present proceeding have not resolved the security concerns raised by the warrant. None of the documents submitted by the Individual are exculpatory. The videos submitted by the Individual which he claims show that the Detective planted evidence in the form of spent bullet shells do not appear to me to show any evidence of

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<sup>8</sup> The alleged criminal behavior occurred a little over six months ago, there is no evidence indicating that the Individual was pressured or coerced into committing the shooting, there is no evidence that the Individual has been rehabilitated. See Adjudicative Guideline J at ¶ 32 (a), (b), and (d).

that allegation. While the screen shots submitted by the Individual in order to show that he was invited to the party indicate the Individual and the Ex were on speaking terms on the morning of the incident, they further indicate that the Individual asked if he could attend the party on three occasions during this conversation and never received an outright invitation.<sup>9</sup> Moreover, they show that the Ex was concerned that the Individual might cause trouble at the party if he attended. Most importantly, the Individual's hearing testimony was completely uncorroborated and was often contradicted by other evidence in the record and therefore lacked credibility.<sup>10</sup>

Accordingly, the Individual has not shown that the mitigating condition set forth in Guideline J at ¶ 32(c) are present in the instant case.

I note that I am not concluding that the Individual committed any of the crimes cited in the warrant for his arrest. Rather, I am finding that the doubts raised by the warrant and the language of the Nolle Prosequi have not been sufficiently resolved by the evidence in the record to ensure that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. The regulations require that "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guideline J. Accordingly, the Individual has not demonstrated that restoring 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 not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

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<sup>9</sup> Further, it is not clear if the screen shots submitted by the Individual constitute the entire conversation.

<sup>10</sup> I note that the terms of the Individual's release from custody required that he refrain from contact with any of the witnesses to the September 11, 2022, incident. Ex. 4 at 8.