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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: December 1, 2022 ) Case No.: PSH-23-0033  
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Issued: April 26, 2023

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**Administrative Judge Decision**

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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**

The Individual has a history of criminal conduct including domestic violence against his young son and his former girlfriend (the Ex) who is the mother of his children. Exhibit (Ex.) 15 at 4–5.

In March 2018, the Individual was involved in an incident at a casino where he was physically confronted by the casino’s security officers. Ex. 12 at 8; Ex. 15 at 3. He was detained by police for about 45 minutes and then released without being charged. Ex. 12 at 8; Ex. 15 at 3.

On May 18, 2018, the Individual, after observing the Ex dancing with a man at a casino, threw a laser pointer at her, striking her on her ankle. Ex. 12 at 9; Ex. 15 at 3; Tr. at 28. The Individual also threw the laser pointer at the Ex’s car window with sufficient force to break it. Ex. 12 at 9; Ex. 15 at 3. The casino’s security officers summoned police, and the Individual was eventually fined \$1,000. Ex. 15 at 3. After this incident, the girlfriend filed for a temporary restraining order, which was eventually rescinded when the couple reconciled. Ex. 5 at 4.

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<sup>1</sup> Under the regulations, “Access 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.

On October 16, 2021, the Individual was involved in another incident at a casino, which began when he threw an empty water bottle at the Ex, resulting in his forceful ejection by the casino's security officers. Ex. 12 at 19–20; Ex. 15 at 4. While the police were summoned, no charges were filed against the Individual. Ex. 15 at 4.

On March 25, 2022, the Individual hit the Ex on her head knocking her to the ground and then struck his (then five-year old) son with sufficient force to “bust his [son’s] lip.” Ex. 15 at 4. On March 28, 2022, a court issued an Emergency Temporary Domestic Violence Order of Protection because of this incident. Ex. 10 at 2, 11. The court found that “cause” existed to believe that the Individual had hit the Ex, thrown her to the ground, and had punched his five-year old son. Ex. 10 at 5–6. The court’s opinion granting that order states that the Ex testified that the Individual hit her “in the head from behind and knocked her to the ground” and then hit her several times. Ex. 10 at 5. The Ex further testified that, during that same incident, the Individual punched their five-year old son in the face with a closed fist causing the child to fly into the air from the force of the blow. Ex. 10 at 5. The court reported that the Ex submitted photographs documenting the resulting injuries which showed the child’s swollen face. Ex. 10 at 5. When the Individual was questioned by police about this incident, he claimed that his son had been injured when the Ex’s erratic driving had caused his face to hit the seat of the car because he did not think that the police would believe the actual story. Ex. 15 at 4. The Individual subsequently provided a different account of this incident, stating that he accidentally struck his son when he raised his arm to keep his son away. Ex. 15 at 4; Tr. at 19. The Individual admitted consuming eight beers in six hours prior to this incident. Ex. 15 at 4. After a subsequent hearing on April 27, 2022, the court entered an extended Domestic Violence Protective Order against the Individual. Ex. 6 at 2. Eventually, unspecified criminal charges were filed against the Individual in Federal District court because of this incident.<sup>2</sup> Ex. C at 1–2.

During a hearing held on October 5, 2022, to consider the Ex’s request for an extension of a “domestic violence order of protection” as well as her allegations that the Individual had violated that order on three occasions, the Individual stated to the court that he had not consumed alcohol since July 2022. Ex. 7 at 22, 26. However, during a psychological evaluation conducted by a DOE Psychologist (the Psychologist) on September 26, 2022, the Individual admitted that he had been consuming alcohol regularly since August 2022 and had last consumed alcohol on September 25, 2022.<sup>3</sup> Ex. 15 at 5.

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<sup>2</sup> These charges do not appear in the Statement of Security Concerns (SSC). They only entered the record when a Federal public defender (the PD) representing the Individual submitted an email to me on behalf of the Individual, which appears in the record as Ex. C.

<sup>3</sup> The local security office (LSO) had requested that the Psychologist evaluate the Individual to determine if he had an alcohol use or mental health disorder. Ex. 15 at 1. The Psychologist conducted a clinical interview of the Individual on September 22, 2022, and issued a report on September 26, 2022, in which he concluded that the Individual did not have any condition that would impair his judgment, reliability, stability, or trustworthiness. Ex. 15 at 3, 9. Information obtained by the Psychologist as part of his evaluation, however, provides the factual basis for several of the security concerns appearing in the SSC that is the subject of the instant proceeding.

The Individual has also been cited with several traffic tickets. In March of 2018, the Individual was cited with No Proof of Insurance.<sup>4</sup> Ex. 12 at 8. In June of 2019, the Individual was cited for Expired Registration of a Motor Vehicle, No Proof of Insurance, and No Driver's License.<sup>5</sup> Ex. 12 at 9. In August of 2021, the Individual was cited for Speeding and Reckless Driving. Ex. 12 at 11. On September 5 of the same year, he was cited for Speeding.<sup>6</sup> Ex. 12 at 11.

The local security office (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. *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 one witness, the Individual. *See* Transcript of Hearing, Case No. PSH-23-0033 (hereinafter cited as "Tr."). The LSO submitted seventeen exhibits, marked as Exhibits 1 through 17. The Individual submitted three exhibits, marked as Exhibits A through C.

Exhibit A is a copy of a court order suspending the Domestic Violence Protective Order against the Individual. Ex. A.

Exhibit B is a copy of the receipt showing that the Ex paid to have the Protective Order suspended. Ex. B.

Exhibit C is an email dated March 23, 2023, to me from a public defender (PD) who explained that she is representing the Individual in Federal court against unspecified criminal charges arising from the March 25, 2022, incident. Ex. C at 1. The PD states in the email: "We are working toward a pretrial diversion outcome that would result in the charges against [the Individual] being dropped." Ex. C at 1. The PD further notes that the Individual is now involved in his children's lives and is complying with his employer's requirements that he submit to biweekly urine tests and complete a six-week alcohol awareness program. Ex. C at 1. She further reports that, as a condition of his pre-trial release, the Individual is required to abstain from alcohol use. Ex. C at 2.

## **II. The Notification Letter and the Associated Security Concerns**

The summary of security concerns (SSC) attached to the Notification Letter informed the Individual that information in the possession of the DOE creates substantial doubt concerning his eligibility for a security clearance under Guideline J (Criminal Conduct), citing the Emergency Temporary Domestic Violence Order of Protection filed against the Individual in March of 2022, the four incidents of physical violence that occurred between 2018 and 2021, his provision of false

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<sup>4</sup> This charge was eventually dismissed. Ex. 5 at 3.

<sup>5</sup> These charges were dismissed. Ex. 5 at 4.

<sup>6</sup> These speeding incidents resulted in fines and court fees, which the Individual paid. Ex. 5 at 4.

testimony about his alcohol use during a court proceeding, and his four traffic citations. These allegations adequately justify the LSO's invocation of Guideline J. The Adjudicative Guidelines state: "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness." Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is "[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." 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 Testimony

At the hearing, the Individual testified on his own behalf. The Individual confirmed in his testimony that all the incidents mentioned in the SSC occurred, though he disputed some details about his conflicts with the Ex. Tr. 27–39. The Individual provided his version of the March 25, 2022, incident in his testimony:

[The Ex] started hitting me and hitting me. And I told her, "Stop." And she kept hitting me. And I finally just got mad and I hit her back and when I hit her back, she went -- she fell down to the floor, 'cause like, I kind of like -- like hit her where, like, I don't know, like off guard, I guess. And I did. I admit to that, you know. . . . I was just mad 'cause she kept hitting me and hitting me. And so when I did, she fell, and my son went running up to us. And she was getting back up to come at me, and that's when I stuck my hand out, with the back of my hand to push my son away, 'cause she was coming at me, and pretty much she was running to me, and I

stuck out my hand at the same time and smacked him in the face. And I didn't mean to. He fell to the floor, and at that point I just felt so just like embarrassed. I just felt so, just like, I don't know, like just -- I don't know how to even explain it. I just -- I don't know, just being from a dad to just someone who I ain't, just -- I don't know, I just took off. I just took off walking.

Tr. at 19.

The Individual testified that because of this incident, the Ex sought and obtained an emergency temporary domestic order of protection preventing him from contacting her and their children for a period of six months. Tr. at 12. After the Individual complied with the order for the first six months, the order was modified to allow the Individual to see his children. Tr. at 12, 22. The Ex requested that the protective order be dropped regarding the Individual's contact with her, and a judge granted that request in January of 2023. Tr. at 40.

When the Individual was confronted with the discrepancy between his testimony at a October 5, 2022, court hearing that he had not had a drink since July 2022 and his September 26, 2022, statement to the Psychologist that he had been consuming alcohol regularly since August 2022, the Individual testified:

'Cause I'm not -- so I'm not really good with dates and times, stuff like that. So when he was asking me, I had to go back and check to see when, because it's, I don't know, just, time has been -- tell you the honest truth, I don't remember. I pretty much just -- see, the 4th of July, I think it was, like 4th of July weekend was the last time I had alcohol. And then I didn't have alcohol for a while because I was going to those classes here. . . . And I wasn't drinking for a while. And then I -- when I went, they were saying like, you know, like pretty much, like you can drink alcohol to a certain amount, that -- that you can drink, you know, here and there, but not like go on binges, don't do this and that. So I just -- I don't know. I'm not sure. I don't know, like -- [.]

Tr. at 25–26. The Individual then denied that he was intentionally trying to mislead the court. Tr. at 26.

When the Individual was asked about the October 16, 2022, incident where he threw a water bottle at the Ex, he claimed that he did not throw the water bottle at the Ex but rather at someone else.<sup>7</sup> Tr. at 32.

The Individual testified that the Ex was employed at the casino where several incidents occurred. Tr. at 30. The Individual testified that the Ex would badmouth him to the other casino employees and the result was that they did not like him and would give him a hard time. Tr. at 30. He is banned from that casino. Tr. at 30. The Individual testified that he is no longer in a relationship with the Ex, which he believes will help them to break the “cycle of violence” that contributed to the incidents mentioned in the SSC. Tr. at 26, 56. The Individual testified that the Ex “would hit

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<sup>7</sup> In his response to an August 3, 2022, Letter of Interrogatory, the Individual admitted that he had thrown the water bottle at the Ex. Ex. 12 at 19.

me in places where people can't see, scratch me places where people can't see, and then, you know, I get hit and hit." Tr. at 57. He stated that he is in a new relationship that is happier and healthier and will prevent him from repeating his pattern of violent behavior. Tr. at 49.

The Individual admitted that alcohol had played a part in the incidents, since it had "fueled the situation," even though it was not the only cause. Tr. at 50. He testified that he last used alcohol about three weeks before the hearing. Tr. at 50. The Individual stated that he completed an alcohol education program and enrolled in a substance abuse program. Tr. at 23, 60–62. However, he has not undertaken any counseling or anger management courses, even though a judge had suggested that he do so. Tr. at 33, 35, 62–63. He testified that the possibility of losing his clearance and his job and the potential of losing the ability to see his children has motivated him to take steps to avoid future incidents of violence and follow rules and laws. Tr. at 47, 54. The Individual further explained that he now knows that he contributed to the unhealthy relationship he was in by reacting to provocation from the Ex, and he intends to ignore any future provocation on her part or to report it if appropriate. Tr. at 57–58. The Individual testified that he must meet with a probation officer. Tr. at 52.

## **V. Analysis**

The Individual has a significant history of sometimes violent criminal activity which evidences poor impulse control, disregard for the rule of law, and a lack of trustworthiness. While the Individual has taken a mandated alcohol education class and is now subject to substance abuse screening and court supervision, he has not sought counseling or to further educate himself on how to avoid future criminal activity. While the Individual claims that he is now in a new, healthier romantic relationship, that testimony is uncorroborated in the record.

The Adjudicative Guidelines provide four conditions that can mitigate security concerns arising under Guideline J. Adjudicative Guidelines at ¶ 32.

First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if "[s]o much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicative Guidelines at ¶ 32(a). In the present case, the most recent incidence of criminal behavior occurred approximately one year prior to the hearing, and the record shows that the behavior was not particularly unusual for the Individual. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 32(a).

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if "[t]he individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life." Adjudicative Guidelines at ¶ 32(b). In the present case, there is no indication that the Individual was pressured or coerced into committing the acts in question here. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 32(b).

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if there is “[n]o reliable evidence to support that the individual committed the offense.” Adjudicative Guidelines at ¶ 32(c). In the present case, the evidence in the record, including the Individual’s own admissions, indicates that he committed the offenses at issue. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 32(c).

Finally, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if “[t]here is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.” Adjudicative Guidelines at ¶ 32(c). In the present case, there is little or no evidence of rehabilitation. The Individual has not shown that he obtained counseling or other assistance to help him process his anger in a non-violent manner. Moreover, even though he admits that alcohol has contributed to his violence, he continues to consume alcohol in violation of his pretrial release conditions. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 32(d).

In light of the foregoing, I find that the Individual has not shown that any of the mitigating conditions set forth in Guideline J at ¶ 32 are present in the instant case.

## **V. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J. After considering all of 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