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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: April 21, 2023)	Case No.: PSH-23-0078
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_____)	

Issued: July 28, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, 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 with a DOE Contractor in a position that requires him to hold an access authorization. In June 2022, the Individual was arrested and charged with Felony Aggravated Battery of a Household Member. Ex. 6 at 1; Ex. A; Ex. 10. The alleged victim subsequently sought an Order of Protection against the Individual. Ex. 11. The criminal charge was reported in July 2022, and as a result, the Local Security Office (LSO) requested that the Individual complete two Letters of Interrogatory (LOI), which the Individual signed and submitted in August and December 2022. Ex. 8; Ex. 9. As questions still remained, the LSO requested that the Individual undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist), who subsequently produced a report (Report) of his findings in January 2023. Ex. 12. The DOE Psychologist relied on the information he obtained in a clinical interview with the Individual, as well as his review of the Individual's Personnel Security File and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). *Id.* at 2. The DOE Psychologist also administered the Minnesota Multiphasic Personality Inventory (MMPI-3) and a phosphatidylethanol (PEth) laboratory blood test "to study [the Individual's] recent use of alcohol." *Id.* As indicated in 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.

Report, the DOE Psychologist concluded, among other things, that the Individual “frequently uses alcohol excessively, beyond the level found to impair judgment.” *Id.* at 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G (Alcohol Consumption), I (Psychological Conditions), and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-23-0078 (hereinafter cited as “Tr.”). He also submitted two exhibits, marked as Exhibits A through B. The DOE Counsel submitted fourteen exhibits marked as Exhibits 1 through 14 and presented the testimony of the DOE Psychologist.

II. Notification Letter and the Associated Concerns

The Notification Letter informed the Individual that information in the possession of the DOE raised security concerns under Guidelines G, I, and J of the Adjudicative Guidelines. Ex. 1.

Guideline G

Under Guideline G, “[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as . . . child or spouse abuse . . . regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]” and “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]” *Id.* at ¶ 22(a) and (c).

With respect to Guideline G, the LSO alleged that in January 2023, the DOE Psychologist determined that the Individual “frequently uses alcohol excessively, beyond the level found to impair judgement.” Ex. 1 at 1. The LSO also alleged that the DOE Psychologist concluded that the PEth test results were “congruent with heavy alcohol consumption.” *Id.* Lastly, the LSO alleged that in June 2022, the Individual was arrested and charged with Felony Aggravated Battery Against a Household Member and that he admitted that prior to his arrest, he had “consumed approximately five beers[.]” *Id.*

Guideline I

Under Guideline I (Psychological Conditions), “[c]ertain emotional, mental, and personality conditions impair judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 27. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is “[b]ehavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including by not limited to . . . deceitful . . . behaviors[.]” *Id.* at ¶ 28(a). With respect to Guideline I, the LSO alleged that the DOE Psychologist determined that the Individual’s “lack of candor and tendency to be less than honest with others is a feature of several mental conditions that impairs his judgment, reliability, stability, and trustworthiness.” Ex. 1 at 1.

Guideline J

Guideline J states that criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness and that, 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. Conditions that could raise a security concern under Guideline J include “[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” *Id.* at ¶ 31(b).

Regarding the Guideline J concerns, the LSO alleged that in June 2022, the Individual was arrested and charged with Felony Aggravated Battery Against a Household Member after the Individual allegedly “pushed and choked” his girlfriend. Ex. 1 at 2. The LSO further alleged that a couple of days following the arrest, “a Petition for Order of Protection from Domestic Violence Abuse was filed against [the Individual].” *Id.*

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 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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

As stated above, the Individual was arrested and charged with Felony Aggravated Battery of a Household Member in June 2022. Ex. 9 at 1, 3; Ex. 10 at 2–3; Ex. 6 at 1. The Individual indicated in his August LOI, testimony, and stated to the DOE Psychologist that he “got into a heated argument” with his girlfriend in June 2022 over a cell phone and some statements she had made about the Individual’s children. Ex. 12 at 3; Ex. 9 at 1–2; Tr. at 20, 33. The Individual testified that the couple began yelling at each other after he confronted her about the suspected contents of her cell phone. Tr. at 33–34. The Individual alleged in the August LOI that his girlfriend slapped him, at which point, he attempted to hold her at a distance from him, and when he “began walking away[,]” “she followed [him.]”² Ex. 9 at 2; Ex. 10 at 1; Tr. at 20, 34. The Individual went on to state in his August LOI that his girlfriend “moved aggressively toward [him]” and at that point, he “put [his] hands up to keep her away” at which point her necklace and his hands were entangled, breaking the necklace when he moved his hand. Ex. 9 at 2; Tr. at 20. He stated in the August 2022 LOI that at that point, he went outside, and when he returned, his girlfriend threatened to call law enforcement personnel. Ex. 9 at 2. He went on to state in the August 2022 LOI that he proceeded to another room for a second time, and when he returned to the room his girlfriend was occupying, she threatened to call law enforcement again. Ex. 9 at 2. His girlfriend proceeded to call law enforcement and once they arrived, she “started crying and told them [he] had choked her” Ex. 9 at 2; Tr. at 20. He testified that they were questioned separately by the officers who responded, after which, he was arrested. Tr. at 36–37.

The incident report compiled by law enforcement personnel stated that the Individual’s girlfriend had alleged that the Individual had “choked her and pushed her[.]” Ex. 10 at 1. The incident report also indicated that the confrontation was the result of the fact that the Individual’s girlfriend refused to let the Individual examine the contents of her cell phone, and that the Individual’s girlfriend alleged that when the Individual strangled her, he also “ripped a diamond necklace from her neck[.]” *Id.* The Individual told law enforcement personnel that he had “held [his girlfriend] away from him to avoid being slapped again” and “admitted to ripping a necklace off” of his girlfriend. *Id.* He was arrested “based on probable cause to believe he committed battery on a household member[.]” *Id.*

In his August 2022 LOI and testimony, the Individual admitted that before the confrontation with his girlfriend, he had consumed approximately five beers over the course of three hours. Ex. 9 at 2; Tr. at 21. He testified that they were both intoxicated at the time of the confrontation. Tr. at 21, 43–44, 47. In his December 2022 LOI, the Individual indicated that his current pattern of alcohol consumption consisted of approximately two to three beers once or twice per week, and that this pattern of consumption began in May 2020. Ex. 8 at 2. He also stated that he last consumed alcohol three days prior to the submission of the December 2022 LOI, consuming two beers over the span of two hours. *Id.* He went on to state that he becomes intoxicated about once a month, and that he was last intoxicated on the night of the incident in June 2022, having consumed six alcoholic beverages over a three-to-four-hour period. *Id.* at 3.

² In his testimony, the Individual indicated that his girlfriend pushed him immediately after she slapped him. Tr. at 34. He testified that following the push, he “walked away from her” and proceeded to another room. *Id.* at 34–35. He then stated that after he came back into the room that his girlfriend was occupying, she attempted to push him again, at which point, he put his hands up, causing her necklace to become entangled with his hand. *Id.* at 35.

A Temporary Order of Protection and Order to Appear (Temporary Order) was issued days after the Individual was arrested. Ex. 9 at 5; Ex. 11 at 1–4; Ex. 12 at 4. The Temporary Order indicated that the Individual was not to have any contact or abuse the alleged victim. Ex. 11 at 1. The Individual indicated in his August 2022 LOI that the Temporary Order was dismissed in August 2022. Ex. 9 at 5; Ex. B; Tr. at 38–39. The criminal matter was also dismissed in March 2023.³ Tr. at 21; Ex. A.

During the January 2023 clinical evaluation, not only was the DOE Psychologist informed of the June 2022 incident, but the Individual indicated that he had a “video of [his girlfriend] laughingly telling a friend about it on the phone immediately afterward.” Ex. 12 at 4; Tr. at 46–47. Regarding his alcohol consumption, the Individual told the DOE Psychologist that he becomes intoxicated after consuming five to six beers over the course of three hours, which occurs approximately once every month or month-and-a-half. Ex. 12 at 4. The Individual indicated that he last consumed alcohol the prior evening, consuming one sixteen-ounce beer with his dinner, and in the two evenings prior, he consumed three twelve-ounce light beers over the course of four hours. *Id.* He stated that he consumes alcohol about two to four days per week and denied any problematic alcohol consumption. *Id.*

As indicated above, a PEth test was conducted in conjunction with the psychological evaluation. The PEth test results indicated heavy alcohol consumption “of at least” four alcoholic drinks several days per week. *Id.* at 4. The Report indicates this was inconsistent with what the Individual reported regarding his alcohol consumption; namely, that he would usually consume alcohol “two to four days a week[.]” *Id.* at 4–5. In the Report, the DOE Psychologist opined that the Individual “frequently uses alcohol excessively, beyond the level found to impair judgment.” *Id.* at 6. The DOE Psychologist indicated that the Individual may show adequate evidence of rehabilitation or reformation by first acknowledging his maladaptive alcohol consumption, abstaining from alcohol consumption for twelve months, and “providing negative PEth laboratory tests at least every six weeks. *Id.* Further, the Individual should complete an intensive outpatient program (IOP), consisting of “a minimum of nine hours of therapeutic and educational meetings a week, usually in three-hour sessions, for between [twelve] to [sixteen] weeks.” *Id.* The IOP should also offer group and individual therapy. *Id.* Finally, the Individual should attend Alcoholics Anonymous (AA) or similar type meetings at least four times per week. Ex. *Id.*

In the Report, the DOE Psychologist observed that the Individual’s MMPI-3 validity scales indicate that the Individual “did not attempt to obviously manipulate the test.” *Id.* at 5. However, the DOE Psychologist noted that “[i]t is still possible and not difficult to minimize admitting certain behaviors if one considers them to be derogatory.” *Id.* The DOE Psychologist stated that the Individual’s “lack of candor about his drinking raises the likelihood that he is denying other tendencies that he considers the DOE might consider derogatory.” *Id.* The Report states that the Individual’s “lack of candor makes it difficult to have confidence in what he says and raises questions about his judgment.” *Id.* at 7. The DOE Psychologist indicated that “lack of candor may be more generally [a part] of [the Individual’s] character than just his statements about drinking.” *Id.* The Report goes on to state that the “tendency to be less than honest with others is a feature of

³ The Individual testified that his girlfriend was not cooperating with the prosecution and was in an entirely different state at the time of dismissal. Tr. at 37–38.

several mental conditions, and not necessarily an indication of diagnosable mental disorder.” *Id.* In his testimony, the DOE Psychologist testified that large disparity between how much the Individual reported drinking in the days before the evaluation and the high PEth test result led him to this conclusion. Tr. at 27–28, 50–52. The DOE Psychologist also stated that during the evaluation, the Individual impressed him with his honesty but that when he received the PEth test results, he “realized that [the Individual] was not being truthful with [him], and that [he] was not able to detect that.” *Id.* at 51, 54. He went on to state that “for [the Individual] to do that so convincingly . . . suggests to [him] that it may extend beyond just his drinking, that this may be something that he does, not being completely truthful when the truth might work against him.” *Id.* at 51–52. The Individual disagreed with this assessment in his testimony, indicating that he is “not super outgoing[.]” and that this is not a reflection of his trustworthiness, as his trustworthiness has never been an issue. *Id.* at 24, 26–27.

At the hearing, when asked if he believes he has “an issue with alcohol[.]” the Individual stated “[p]ossibly a moderate [issue]” but admitted that he had not sought any kind of treatment or counseling specifically for his consumption. *Id.* at 16, 18, 23. When asked if he felt his alcohol consumption was problematic, he stated that he does not, because “there [have not] been any incidents.” *Id.* at 29–30. He testified that although he had received the DOE Psychologist’s recommendations, he “[did not] realize at the time that [he] should follow those recommendations” prior to the hearing. *Id.* at 18. The Individual had not submitted to any PEth tests outside of the one conducted in conjunction with the psychological evaluation. *Id.*

The Individual also testified that he had not abstained from alcohol, having last consumed three beers at home the previous Friday. *Id.* at 16–17. The Individual indicated that he would like to reduce his alcohol consumption, and that he is not opposed to abstaining from alcohol entirely. *Id.* at 17. He clarified that he was under stress during the pandemic and he was living “under extremely stressful conditions[.]” following the incident, accordingly, his alcohol consumption increased. *Id.* at 17–19, 29. He testified that he was consuming less alcohol than the time he was interviewed by the DOE Psychologist. *Id.* at 17–19. He stated that at the time of the evaluation, he was drinking approximately four to six alcoholic beverages three to four times per week. *Id.* at 19. Since then, he stated, he has reduced his alcohol consumption to approximately two to three drinks at a frequency of once or twice a week. *Id.* at 19, 29. He stated that he did not entirely concur with the DOE Psychologist’s assessment and recommendations, but if following the recommendations is “what it takes for [him] to keep [his] clearance[.]” then he is willing to do so. *Id.* at 22–23.

Regarding the criminal matter, the Individual indicated that while he understood the concerns the LSO had about the fact law enforcement was called, he also indicated his belief that the fact this was his only involvement with law enforcement since becoming an adult should be considered. *Id.* at 21. The Individual also stated that he had not found himself in similar circumstances prior to the 2022 incident, and accordingly, he believes this situation was unique. *Id.* at 22. He emphasized that he is “absolutely willing to follow all laws and regulations.” *Id.*

He stated that he reconciled with his girlfriend approximately a month prior to the hearing, that they have “talked everything out[.]” that they are both seeking one-on-one counseling with separate counselors, and that they have resumed living together. *Id.* at 22, 31–31, 38. The Individual began seeking counseling after the criminal matter was dismissed, because he felt it

would be “good to talk to somebody” after “everything that happened.” *Id.* at 40–41. The Individual stated that he primarily discusses such matters as anxiety, stress, daily life, and the fallout from the June 2022 incident. *Id.* at 24–25, 41. However, he indicated that his alcohol consumption is usually discussed at every meeting, as his counselor “believed . . . that [his consumption] could be an issue[.]” *Id.* at 41–42.

The DOE Psychologist testified that the Individual had not complied with any of the recommendations made in the Report. *Id.* at 53. He noted the fact that the Individual failed to submit to any PEth tests, and accordingly, he “[can not] believe that” the Individual is only consuming two to three alcoholic drinks twice per week. *Id.* at 54. He did not feel that the Individual had shown adequate evidence of rehabilitation or reformation. *Id.* He went on to state that he feels the Individual is “basically an honest fellow[.]” *Id.* at 53–56. At the time of the hearing, the DOE Psychologist still agreed with the assessment he had made in the Report as it pertained to the Individual’s candor. *Id.* at 57.

V. Analysis

Guideline G

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

- (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.

As an initial matter, the fact that the Individual has not endeavored to abstain from alcohol consumption and does not believe his alcohol consumption is necessarily problematic is very concerning and does not reflect well on his judgment. He admitted during the hearing that he was intoxicated on the day of the incident in June 2022, he acknowledged in his testimony that his alcohol consumption had subsequently increased as a result of the pandemic and stress in his life,

and he testified that his counselor had voiced concern over his alcohol consumption and continues to ask him about his drinking during their meetings. While I understand that the Individual has recently reduced his alcohol consumption, he continues to drink alcohol despite the very serious issues his alcohol consumption has caused him. Further, the recommendation I have before me, among other things, indicates that the Individual should abstain from alcohol consumption for at least twelve months. I also cannot find that he has mitigated any of the stated concerns based on the testimony indicating that he may reduce his alcohol consumption or discontinue drinking altogether at some future date. Lastly, and importantly, I have testimony from the DOE Psychologist indicating that the Individual has not shown adequate evidence of rehabilitation or reformation.

As the Individual continues to consume alcohol, I cannot conclude that enough time has passed, that the behavior took place under unusual circumstances, or that it was infrequent such that factor (a) applies to mitigate the concerns. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (a).

As stated above, the Individual does not believe his alcohol use is problematic. Accordingly, I cannot conclude that he has mitigated the stated concerns pursuant to mitigating factor (b).

As there is no indication that the Individual has sought treatment or counseling for his problematic alcohol consumption, the mitigating factors (c) and (d) are not applicable.

Guideline I

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

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

I have no compelling reason and there is no evidence before me that makes me doubt the DOE Psychologist's professional assessment that the Individual's lack of candor is a feature of several mental conditions. Although the results of the MMPI-3 did not indicate that the Individual was "attempt[ing] to obviously manipulate the test[,]" the DOE Psychologist noted that one may "minimize admitting certain behaviors if one considers them to be derogatory." Ex. 12 at 5. It is arguable that the Individual's failure to admit at the hearing that his alcohol consumption is problematic in nature, despite the fact I am aware that his consumption has caused legal entanglements and that his counselor and the DOE Psychologist have expressed concern over his drinking, is a continuation of the minimizing behavior to which the DOE Psychologist is referring. Additionally, I harbor some doubts regarding the Individual's explanation about what transpired on the night of the incident in 2022. As an initial matter, I remain somewhat incredulous over the Individual's assertion that his girlfriend's necklace simply became entangled with his hand when he was allegedly attempting to take a defensive posture. Additionally, I have the police incident report and a complaint attached to the Temporary Order stating that the Individual's girlfriend asserted that the Individual had strangled her, an allegation that convinced law enforcement personnel to make an arrest the same night. Lastly, I do not have the any testimony from the Individual's girlfriend, with whom the Individual stated he had recently reconciled, to indicate that the allegation of violence against her was a fabrication, as the Individual's version of events suggests. While I am willing to accept that the Individual may not have kept track of exactly how much he had consumed prior to seeing the DOE Psychologist and that the incident may not have occurred exactly as alleged by the Individual's girlfriend, I do believe that the significant disparity between the PEth test results and the Individual's self-reports of alcohol consumption, as well as the differing accounts of violence on the night of the incident, leaves me without sufficient cause to question the DOE Psychologist's assessment.

While I am aware that the Individual is seeking counseling, I have nothing before me to indicate that the Individual is seeking treatment for this particular concern or that he has a treatment plan. The record is also bereft of any statement from any mental health professional indicating that the Individual's condition is under control. Therefore, the mitigating factors at (a), (b), and (c) are not applicable in this case.

As the DOE Psychologist did not alter his assessment from the Report after hearing the testimony, I cannot conclude that the condition has resolved or that there is no indication of a current problem. Accordingly, I cannot conclude that that the Individual has mitigated the stated concerns pursuant to the mitigating factors at (d) and (e).

Guideline J

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.

The dismissal of the Temporary Order and the criminal matter are not dispositive of whether the criminal act took place. It only indicates that the Individual is no longer involved in any lawsuit regarding the matter. Regarding the incident that took place approximately thirteen months ago, the Individual admitted that he had been drinking and that he was intoxicated. At the time of the hearing, although the Individual stated he was amenable to the possibility of remaining abstinent from alcohol, he was still consuming alcohol and did not seek any specific treatment for his consumption. Further, the Individual and his girlfriend remain in a romantic relationship. While it is heartening that they are receiving individual, one-on-one counseling, due to the aforementioned facts, I am not sufficiently assured that this incident is unlikely to recur, as the I am unable to conclude that the June 2022 incident happened under unusual circumstances or that enough time has elapsed. I cannot conclude that the mitigating factor at (a) has been satisfied.

In the same vein, I cannot conclude that there was no reliable evidence to support that the Individual committed the alleged offense. While the Individual asserts he did not commit the alleged offense as described by his girlfriend, I have a police incident report, charging documents, and a complaint for a Temporary Order all alleging that the Individual committed some sort of battery on the day of the incident. Accordingly, the Individual has not mitigated the stated concerns pursuant to the factor at (c).

I have no evidence before me that the Individual was pressured or coerced into committing any criminal acts. Accordingly, the mitigating factor at (b) is not applicable.

Finally, in addition to my above findings, I have no indication that the Individual has taken any responsibility for any behavior exhibited on the night of the incident, which is an important consideration for rehabilitation. Further, I have no evidence of positive community involvement, further education or training, or any information regarding his employment record, good or bad. The mitigating factor at (d) is not applicable.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G, I, and J of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient

evidence to resolve the security concerns set forth in the Notification Letter. 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, I find 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.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals