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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 17, 2023) Case No.: PSH-24-0008
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Issued: January 9, 2024

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 should not be granted access authorization.

I. BACKGROUND

On March 10, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 7 at 118.² The Individual checked boxes on the QNSP denying that in the last seven years he had: received a written warning or been reprimanded by any employer; been issued a summons, citation, or ticket; been arrested; illegally used any drugs or controlled substances; fallen into delinquency on child support payments; or fallen into delinquency on any routine financial accounts. *Id.* at 95, 99, 111, 113, 115–16. The Individual also denied that he had ever been convicted of a crime involving domestic violence. *Id.* at 111–12. The Individual disclosed on the QNSP that he had been charged with Unlawful Use of Drug Paraphernalia, a misdemeanor offense, in 2012, and denied that he had been charged with any other drug-related offenses. *Id.*

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.

² The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

A background investigation of the Individual revealed information that the Individual failed to disclose on the QNSP, including that he had incurred several consumer debts that were referred to collections, had been terminated from his employment by a former employer for rule violations, used marijuana weekly until 2019, had been convicted of Domestic Assault, and had been arrested or cited for unlawful conduct on numerous occasions, including an arrest for Possession of a Controlled Substance for which he was charged with a felony. Ex. 6 at 80; Ex. 8 at 175, 181, 200–36. The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the information revealed by the background investigation. Ex. 5. The Individual’s responses to the LOI did not resolve the LSO’s security concerns. *See* Ex. 3 (summarizing the LSO’s evaluation of the Individual’s eligibility for access authorization).

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 10–12. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E and J of the Adjudicative Guidelines. *Id.* at 5–9.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted eight exhibits (Exs. 1–8). The Individual submitted one exhibit (Ex. A). The Individual testified on his own behalf, and offered the testimony of his supervisor and the mother of his children. Hearing Transcript (Tr.) at 3, 12–13, 20, 35. The LSO did not call any witnesses to testify. *Id.* at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5–6.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC alleged that the Individual failed to disclose discipline by a former employer, delinquency on consumer debts, delinquency on child support obligations, arrests and citations for unlawful conduct, conviction for an offense involving domestic violence, drug-related arrests, and use of illegal drugs on the QNSP as required. Ex. 1 at 5–6. The LSO’s allegation that the Individual deliberately omitted relevant facts from the QNSP justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the second basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 7–

9. “Criminal activity creates doubt about a person’s judgment, 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. The SSC listed 18 occasions on which the Individual was arrested or cited for unlawful conduct, numerous occasions in which law enforcement was summoned in connection with domestic disturbances involving the Individual, and the Individual’s admission to illegal drug use, including weekly marijuana use from 2000 to 2019. Ex. 1 at 7–9. The LSO’s allegations that the Individual engaged in numerous instances of unlawful conduct and the Individual’s admission to illegal drug use justify its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(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 Dep’t 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *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.

IV. FINDINGS OF FACT

In November 2008, the Individual pleaded guilty and paid a fine to resolve a charge of improper use of registration and title of a vehicle after a bench warrant was issued for his arrest. Ex. 8 at 231–32. Later that month, the Individual was charged with Possession of Marijuana, Driving with a Suspended or Revoked Driver’s License, and Improper Display of Vehicle License. *Id.* at 230–31. The Possession of Marijuana charge was dismissed *nolle prosequi* after the local prosecuting agency decided not to pursue the case, and the Individual paid a fine to resolve the other charges. *Id.*

In 2009, the Individual pleaded guilty to Driving with No State Vehicle License and paid a fine. *Id.* at 229–30. In 2010, the Individual was cited for speeding, Driving with No Rearview Mirror, Driving Without Insurance, and, on two occasions, Driving with No State Vehicle License. *Id.* at 228–29. The Individual pleaded guilty and paid fines to resolve each of these offenses. *Id.* A bench

warrant was also issued for the Individual's arrest in connection with a proceeding related to a citation for a parking meter violation. *Id.* at 227.

On July 6, 2010, the Individual was arrested and charged with Simple Assault in connection with a dispute with his children's mother. *Id.* at 180, 212; *see also* Ex. 5 at 41 (reflecting the Individual's statement in response to the LOI that the dispute concerned "[his] time with [the] kids"). The Individual was found guilty and sentenced to probation. Ex. 8 at 212. The Individual complied with the terms of his probation, including attending a 12-week "Batterer's Intervention" program and paying a fine. *Id.*

In May 2011, the Individual was charged with Improper Display of Vehicle License, Improper Use of Registration and Title of a Vehicle, and speeding. *Id.* at 226–27. The Individual pleaded guilty and paid fines to resolve each of the offenses. *Id.* In March 2012, the Individual was arrested and charged with felony Possession of Marijuana and Possession of Drug Paraphernalia. *Id.* at 201–03. In June 2012, the Individual was arrested and charged with Intent to Inflict Injury after allegedly pushing a woman and grabbing her wrists. *Id.* at 209. The charges for the June 2012 incident were dismissed. *Id.* In October 2012, the Individual was arrested and charged with Felony Possession of a Controlled Substance. *Id.* at 201. The Individual pleaded guilty and was sentenced to two years' probation, which he successfully completed. *Id.*

In February 2013, the Individual was cited for failing to comply with state license plate requirements and failing to wear a seat belt. *Id.* at 208–09. In July 2013, the Individual was again cited for failing to comply with state license plate requirements and failing to wear a seat belt. *Id.* at 207–08. Bench warrants were issued against the Individual after he failed to appear at proceedings concerning these citations, after which he pleaded guilty and paid fines to resolve each of the offenses. *Id.* at 207–09.

In February 2014, the Individual was arrested and charged with harassment after he communicated with the victim multiple times in one day using language a prosecuting agency alleged was "offensive, coarse[,] and vulgar" and for the purpose of intimidating the victim. *Id.* at 223; *see also* Ex. 5 at 47 (reflecting the Individual's statement, in response to questions in the LOI concerning how the incident occurred, that he contacted the victim to ask her to remove his photos from her social media account). The Individual pleaded guilty and was sentenced to two years' probation, pursuant to which he paid a fine and refrained from contact with the victim. Ex. 8 at 223–24.

In April 2014, the Individual was cited for speeding and paid a fine to resolve the offense after a bench warrant was issued for his arrest. *Id.* at 206–07. In April 2015, the Individual was cited for speeding. *Id.* at 206. A bench warrant was issued for the Individual's arrest in connection with this offense. *Id.*

On May 2, 2015, the Individual was arrested and charged with harassment and destruction of property after he urinated on the bed of the mother of his children and destroyed her personal property. *Id.* at 205; *see also* Ex. 5 at 49 (reflecting the Individual's statement in response to the LOI that the conduct occurred while he was trying to remove his personal belongings from the home of his children's mother); Tr. at 22–23 (reflecting the testimony of the mother of the

Individual's children at the hearing that she could not remember the details of the incident). The charges associated with this incident were dismissed without prejudice. Ex. 8 at 205–06.

On September 26, 2017, the Individual was arrested pursuant to a bench warrant issued in connection with his 2015 speeding offense. *Id.* at 218. One of the arresting officers smelled marijuana in the Individual's car, and a search of the Individual's vehicle yielded a bag of marijuana and an ecstasy pill. *Id.*; *see also* Ex. 5 at 37 (representing in his response to the LOI that he had not used ecstasy since 2012); Ex. 8 at 179–80 (reflecting the Individual's admission during the interview with the investigator to possessing the marijuana and his claim that the ecstasy pill "could have been ecstasy from years ago that was lost in his car without his knowledge"). The Individual was charged with felony Possession of a Controlled Substance. *Id.* at 248. The charges were ultimately dismissed at the request of the prosecuting agency. *Id.* at 250.

In December 2017, a show cause warrant was issued for the Individual's arrest after he failed to appear at a proceeding related to the bench warrant issued in connection with his 2015 speeding offense. *Id.* at 206. The Individual was arrested in connection with this warrant in 2018, and subsequently paid a fine to resolve the offense. *Id.*

On March 16, 2018, the Individual was arrested and charged with Domestic Assault and Obstruct/Resisting Arrest. *Id.* at 217, 220. The victim alleged that the Individual grabbed the collar of her shirt with both hands and yelled in her face during a domestic dispute. *Id.* at 221. The Domestic Assault charges were dismissed after the victim refused to cooperate with the prosecution. *Id.* at 221. The Individual pleaded guilty to Obstruct/Resisting Arrest, and was sentenced to two years' probation pursuant to which he participated in counseling and paid a fine. *Id.* at 220.

In March 2021, the Individual stopped making child support payments to the mother of his children. *Id.* at 234 (indicating that the Individual had made child support payments since 2011, but stopped in March 2021); *see also id.* at 177 (containing the investigator's summary of the interview with the Individual, in which the Individual claimed that the mother of his children had agreed to the suspension of child support payments in 2021 "so that he could work less and spend more time with the kids" but that she subsequently had the order reinstated and he was required to pay the arrears that had accumulated during the suspension of the order). By the end of 2021, the Individual owed \$7,350 in unpaid child support. *Id.* at 234. The Individual also had a \$771 consumer debt referred to collections in 2021. Ex. 6 at 80.

On January 31, 2022, the Individual was involved in a dispute with his teenaged son in a grocery store. Ex. 8 at 215. Witness accounts and security footage of the incident indicate that the Individual's son attempted to strike the Individual with a closed fist during a verbal dispute. *Id.* at 216. The Individual then struck his son, knocking him to the ground, and stood over him throwing at least 10 punches at the son's head while the son lay curled up attempting to block the blows. *Id.* The Individual and his son were ultimately separated after customers intervened. *Id.* at 215–16. There is no record of the Individual having been charged with any offense in connection with the incident. *See* Ex. 5 at 56 (reflecting the Individual's statement in response to the LOI that he was not charged in connection with the incident).

The Individual signed and submitted the QNSP on March 10, 2022. Ex. 7 at 118. As part of completing the QNSP, the Individual certified that its contents were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* The Individual checked a box marked “No” on the QNSP in response to a question concerning whether he had “received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace” in the prior seven years. *Id.* at 98. The Individual also checked a box marked no in answer to a question asking whether he had “illegally used any drugs or controlled substances” in the prior seven years. *Id.* at 113. The Individual additionally checked boxes marked “No” to indicate that he had not been delinquent on child support payments, had any debts turned over to a collections agency, or been over 120 days delinquent on any debt in the prior seven years. *Id.* at 115.

Regarding his criminal history, the Individual disclosed his first 2012 drug-related arrest on the QNSP. *Id.* at 111. He checked a box marked “No” to indicate that he had no other felony charges, convictions for domestic violence or crimes of violence, or charges involving alcohol or drugs. *Id.* at 112.

An investigator conducted a background of the Individual which revealed that the Individual had not disclosed criminal activity and financial delinquencies on the QNSP as required. Ex. 8 at 200–32 (listing the information collected by the investigator concerning the Individual’s encounters with law enforcement); Ex. 6 at 80–81 (reflecting a credit report obtained by the investigator which showed that the Individual’s child support obligations and a consumer debt had been referred to collections and that the Individual had twice fallen 150 days past due on a credit card debt). On April 12, 2022, the investigator interviewed the Individual. Ex. 8 at 174. The Individual volunteered that he had been terminated from a job in 2019 for using a cell phone in an area where he was prohibited from doing so after previously having been written up for the same violation. *Id.* at 175.

During the interview, the Individual affirmed his claims on the QNSP that his first 2012 drug-related offense was the only criminal offense he was required to disclose and that he had no financial delinquencies to report. *Id.* at 176–77. The investigator confronted the Individual with the information obtained during the background information, and the Individual represented that he had not intentionally failed to withhold information that he was required to disclose. *Id.* at 176–78. With respect to his child support obligations, the Individual represented that he had paid the child support arrears and that he was “all caught up.” *Id.* at 177. However, the investigator contacted the state agency with responsibility for administering the Individual’s child support obligations and was told that the Individual owed \$10,150 in past due child support. *Id.* at 234.

On April 25, 2022, law enforcement officers responded to an incident of potential domestic violence after the Individual’s father alleged that the Individual struck him in the face multiple times and took his phone during an argument. Ex. 8 at 214–15. However, the law enforcement officers who responded to the incident did not observe any injuries to the Individual’s father’s head or face. *Id.* at 215. The Individual’s father subsequently decided not to cooperate with the prosecution of the Individual, and the Individual was never charged with any offense in connection with the incident. *Id.* at 214.

On August 15, 2022, the investigator conducted a second interview with the Individual to address newly discovered information, including the April 25 incident between the Individual and his father. *Id.* at 178. During the interview, the Individual admitted to having smoked marijuana multiple times weekly from approximately 2000 to 2019. *Id.* at 181–82.

On May 17, 2023, the Individual submitted his response to the LOI. Ex. 5 at 77. In his response to the LOI, the Individual represented that he had used marijuana a “couple times a week” until 2019 when he claimed that he stopped using marijuana. *Id.* at 37. The Individual represented that he had last used ecstasy in 2012. *Id.* He denied recollection of a significant portion of the law enforcement encounters identified during the background investigation. *Id.* at 40, 46, 59–67.

The Individual’s supervisor testified at the hearing that the Individual had received “lower-level write-ups” for bringing his phone into the workplace and was placed on a “last chance agreement” and one-year probationary period in May 2023 for mischarging time when he was on breaks. Tr. at 14–15. The supervisor testified that the Individual had paid back the time he mischarged and had not been disciplined since May 2023. *Id.* The Individual’s supervisor opined that the Individual had “responded well” to the discipline, was a productive employee, and conducted himself appropriately in workplace interactions with coworkers and supervisors. *Id.* at 14, 17.

The mother of the Individual’s children testified that she had agreed to the adjustment of the Individual’s child support obligations and that the Individual did not owe her any child support. Tr. at 24; *see also* Ex. A (documenting that the state in which the Individual resides had reduced the Individual’s child support obligations by \$20,939 with the consent of the mother of the Individual’s children). She testified that she believes that the Individual is honest, reliable, and trustworthy, and has demonstrated those qualities in co-parenting their children. Tr. at 25–26. She characterized the Individual’s conduct in connection with the fight with her son in a grocery store in 2022 as “legitimate discipline.” *Id.* at 33.

The Individual testified that he is working two jobs to improve his financial situation and help finance his daughter’s education. *Id.* at 35, 48. The Individual represented that his vehicle is licensed as required and that his failure to pay licensing and registration fees in the past was due to a lack of financial resources and not willful noncompliance. *Id.* at 38–40. The Individual testified that his financial situation had significantly improved and that these offenses were not likely to recur. *Id.* at 40.

Regarding the altercation with his son in a grocery store in 2022, the Individual represented that his son was “having some anger issues,” but that the two of them have a positive relationship and that the altercation was “a one time, isolated incident.” *Id.* at 43. The Individual asserted that he “had to get physical back” with his son and that it was “the only way” to stop his son’s attack. *Id.* The Individual denied that he had struck his father during their altercation in April 2022, and represented that his father was an alcoholic who contacted the police when the Individual “took his alcohol from him” while providing him with food and medicine. *Id.* at 60–61.

The Individual testified that he has not used marijuana since 2019 and has no intention to do so in the future. *Id.* at 49. He represented that he previously lived in a high-crime area, but that he now

lives in a better neighborhood and that his lifestyle is focused on his family and work and is completely different from when he used illegal drugs. *Id.* at 45–47, 59.

The Individual denied that anyone had helped him to complete the QNSP. *Id.* at 54. He testified that he was “rushing too fast” when completing the QNSP and that he tried to clarify any errors in the interview with the investigator. *Id.* at 53. However, he acknowledged that he only provided the information to the investigator after the investigator confronted him with the results of the background investigation. *Id.* at 65–66. The Individual represented that he did not disclose the information before being confronted by the investigator because he had forgotten the details of the events and could not locate documents related to his history of arrests and citations. *Id.* at 66.

V. ANALYSIS

A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and,
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The Individual admitted that he did not attempt to fully disclose the information he failed to disclose on the QNSP to the investigator before the investigator confronted him with the information revealed in the background investigation. While the Individual claimed that he did not do so because he could not obtain the specific details of his criminal record, his lack of access to those details does not explain why he told the investigator that he had no other criminal activity to report besides that listed in the QNSP when he knew that was not the case. The fact that the Individual knew that he had engaged in unlawful activity that he was required to disclose and failed to do so establishes that he did not make good-faith efforts to disclose the information he omitted on the QNSP. Moreover, the Individual's explanations for some of the offenses, such as his claim to the investigator that an ecstasy pill recovered from his car in 2017 could have been in the vehicle since 2012 without his knowledge, are extremely implausible and do not support the Individual's claim to have made a good-faith effort to fully disclose his derogatory conduct. Thus, the first mitigating condition is inapplicable. *Id.* at ¶ 17(a).

The Individual denied that he relied on the assistance of any other person in completing the QNSP, and therefore the second mitigating condition is inapplicable. *Id.* at ¶ 17(b).

The Individual's omissions on the QNSP were numerous and concerned topics significant to the adjudication of his eligibility for access authorization. In light of the number of omissions, and the fact that they concerned significant issues such as the Individual's criminal history, illegal drug use, and financial delinquencies, I find that the Individual's omissions were not minor in nature. In light of the volume and importance of the omissions, and the Individual's failure to remedy these omissions before being confronted by the investigator with evidence of the omissions, I find that the passage of time since he submitted the QNSP in March 2022 is insufficient, in of itself, to resolve the security concerns. The Individual represented that his errors were due to carelessness rather than malintent, and that they were unlikely to recur. However, in light of the Individual's discipline by the DOE contractor for violating multiple workplace rules in the past year, I am not convinced that the Individual will exercise the reliability required to hold access authorization and that the carelessness or malintent that led to the Individual's omissions on the QNSP will not recur. Therefore, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The Individual did not claim to have obtained counseling or any other form of intervention to address issues related to his omissions on the QNSP, and therefore the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d). The fifth mitigating condition is irrelevant in this case because the LSO did not allege that the Individual had engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is irrelevant because the LSO's allegations did not rely on unsubstantiated information or sources of questionable reliability. *Id.* at ¶ 17(f). The final mitigating condition is also irrelevant because the LSO did not allege that the Individual associated with persons engaged in criminal activity. *Id.* at ¶ 17(g).

For the aforementioned reasons, I find that none of the mitigating conditions under Guideline E are applicable to the facts of this case. Accordingly, the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline J

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.

Id. at ¶ 32.

The Individual has not been arrested for any offenses since he pleaded guilty to Obstruct/Resisting Arrest in 2018 to resolve the charges arising from his alleged domestic violence and denies having engaged in any criminal conduct since 2019 when he claims to have last used marijuana. The Individual noted that his traffic offenses ceased around that time and asserted that his improved financial circumstances allowed him to comply with laws concerning registration and licensing of his vehicle. Moreover, he testified that his father's account of the 2022 incident between them was false and, in light of the law enforcement records indicating that the Individual's father showed no physical signs of having been struck, I am convinced that the Individual's father significantly exaggerated the extent of the conflict.

However, I am concerned by the Individual's altercation with his son in 2022. While the record evidence supports the Individual's claim that his son initiated the altercation, the Individual's response to the incident calls into significant question his judgment and reliability. Rather than attempting to deescalate a difficult situation, witness accounts indicate that the Individual knocked his son to the ground and threw at least 10 punches at his son's head while he lay curled on the ground. The Individual's testimony at the hearing suggested that he believed that he had behaved appropriately under the circumstances and that this interaction constituted, as his son's mother characterized it, "legitimate discipline." Even though his son initiated the altercation, and the Individual was never charged with any offense, the Individual's violent escalation of the situation and apparent belief that he had not acted improperly reflects a lack of impulse control and judgment. Thus, despite the passage of over five years since the Individual's last arrest, I am not convinced that the factors that led to the Individual's lengthy record of unlawful conduct are resolved and that he will exercise reliability and good judgment in the future. Accordingly, I find that the first mitigating condition under Guideline J is inapplicable in this case. *Id.* at ¶ 32(a).

The second mitigating condition is irrelevant because the Individual did not allege that he was pressured or coerced into committing unlawful conduct. *Id.* at ¶ 32(b). I find that, for the reasons described above, the third mitigating condition is applicable to the 2022 incident involving the Individual's father. However, the record amply supports the occurrence of the other incidents alleged by the LSO and therefore the third mitigating condition is inapplicable. *Id.* at ¶ 32(c).

As described above, I find that the Individual's conduct in the 2022 incident with his son and current attitude concerning his conduct cast significant doubt on his judgment and reliability. Moreover, the Individual has repeatedly reoffended after periods of parole or probation, and has committed multiple infractions in his current position. He has not alleged that he has performed acts of restitution, obtained job training or higher education, or engaged in constructive community involvement. For these reasons, I find that the Individual has not established rehabilitation under the fourth mitigating condition. *Id.* at ¶ 32(d).

For the aforementioned reasons, I find that none of the mitigating conditions under Guideline J are applicable to the facts of this case. Accordingly, the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E and J of the Adjudicative Guidelines. After considering all the relevant information, 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 Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals