

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-24-0132 at 10 (Tr.). The Individual submitted eight exhibits, marked Exhibits A through H. The LSO submitted twelve exhibits, marked Exhibits 1 through 12.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 5.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). The SSC contains over forty paragraphs; each paragraph contains allegations of criminal conduct, arrests, and charges that occurred between 2006 and 2022 that include, for example, Failure to Appear, Shoplifting, Battery on a Household Member, Domestic Violence, Possession of Heroin, and Driving Under the Influence. Ex. 1 at 5–8. The cited information justifies the LSO’s invocation of Guideline J.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting their eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual admitted that he had a long history of criminal charges that resulted in part from his past drug use and membership during his years as a teenager and young adult in a local gang. Tr. at 12, 14; Ex. 7 at 91. The criminal conduct alleged in the forty-four paragraphs contained in the SSC falls into two general categories: criminal behavior that, in most instances, led to arrest and criminal charges; and arrests, charges, or warrants that resulted from the Individual's failure to appear (FTA) in court. Ex. 1 at 5–8.³

Twenty-nine of the paragraphs contained in the SSC represent the first type: instances of criminal behavior, arrests, and charges. Ex. 1 at 5–8. The record reflects that the Individual admitted responsibility for the majority of the instances of past criminal conduct contained in the SSC.⁴ For example, he admitted to the underlying conduct that resulted in the following criminal charges: False Imprisonment and Intimidating a Witnesses in 2006; Battery Upon a Police Officer and Public Affray in 2010; Driving Under the Influence of Alcohol and Negligent Use of a Deadly Weapon in 2011; and Violation of Controlled Substance Act by Registrant Attempt and Use or Possession of Drug Paraphernalia in 2015. Tr. at 44, 52–53, 54, 57–58. He also admitted to driving several times on a suspended or revoked license, which resulted in charges in 2011 and 2015. *Id.* at 27, 43–44, 52. And he admitted to initially giving his brother's name at the time he was arrested and charged with Possession of a Controlled Substance (cocaine) in 2018,⁵ which resulted in him also being charged with Concealing Identity. Ex. 10 at 236; Tr. at 34.

Additionally, the Individual admitted to several instances of failing to appear for court dates and being charged with and arrested for FTA. *E.g.*, Tr. at 38–39 (admitting to being arrested on active warrants in 2020, while disputing some of those charges), 39 (admitting to being arrested and charged with four FTAs in May 2018), 42–43 (admitting that a warrant was issued for his FTA in October 2016), 48 (admitting to being arrested and charged with FTA in June 2013), 49 (admitting to being arrested and charged in August 2012 for FTA). He testified that, in 2022, he travelled back to another state to resolve pending traffic citations that originated in 2014 because he wanted to improve his life and he anticipated applying for a DOE security clearance. *Id.* at 84–85.

The record demonstrates several instances of the Individual only admitting criminal conduct after being confronted with exhibit evidence. For example, there is a police report from 2013 that indicates that the Individual was named as a suspect in a case of Larceny for stealing money from a home he had visited. Ex. 10 at 256. When initially testifying about this incident, the Individual stated that he could not recall the incident. Tr. at 45; *see also* Ex. 6 at 63 (stating in his LOI response he could not remember “being charged with this”). However, when asked to review the police

³ In this Decision, FTA will also refer to charges of Failure to Comply. *See, e.g.*, Ex. 1 at 5, 6.

⁴ Because of the large number of criminal acts at issue in this case, this Decision will not reference each and every one of the Individual's responses to the allegations contained in the forty-four paragraph SSC, which are provided throughout the transcript. It will, instead, reference specific allegations and responses that are illustrative or particularly relevant to my analysis and conclusion.

⁵ He asserted that he was a passenger in a vehicle at the time, and the cocaine belonged to the driver. Ex. 10 at 237.

report during the hearing, he confirmed the accuracy of the report. Tr. at 45–46. A similar occurrence happened when the Individual testified regarding the allegation contained in the SSC that in 2012 he was named as a suspect of Telephone Harassment. The Individual twice denied that he was involved in the incident before being asked to review the exhibit police report. *Id.* at 50; *see also* Ex. 6 at 61 (denying involvement and stating it was a case of mistaken identity). After reviewing the report, the Individual confirmed that the allegations were true.⁶ Tr. at 51.

The Individual’s most recent criminal charge occurred in April 2020 for Battery on a Household Member. Ex. 10 at 238.⁷ Described in more detail below, the record contains conflicting versions of the Individual’s conduct. A police report indicates that an officer was dispatched to a battery incident and, upon arrival, met with the Individual’s mother who reported that the Individual, who lived with her, “got into a verbal argument with her over money” because he wanted her to pay him back for the electricity bill. *Id.* at 267. The police report states that the mother reported that the Individual called her a pejorative and “kicked her on her back as she was leaving the room.” *Id.* at 268. She reported that, as she called the police, the Individual ran out of the residence. *Id.* The report states that a member of law enforcement later called and spoke with the Individual and told him that he would be charged with battery. *Id.* When providing written responses to questions regarding this incident in the LOI, the Individual stated that he had “never seen these charges.” Ex. 6 at 68. According to the Psychologist, during the evaluation, the Individual denied the charge of Battery on a Household Member and stated that that another person in the area had the same name, and the Individual claimed that he was the victim of mistaken identity.⁸ Ex. 7 at 91. The Psychologist also reported the Individual’s statement that he had not been involved in criminal activity since beginning a drug treatment program in 2018. *Id.* at 92.

The record also includes the description of the same incident that the Individual provided to an Office of Personnel Management (OPM) investigator during an interview related to the Individual’s application for a security clearance. Ex. 10 at 237. The Individual reported that he had been arguing with his brother, which led to them shoving one another. *Id.* The Individual stated that his mother attempted to break them up, and he ended up pushing her. *Id.* He stated that his brother called the police. *Id.* He said he was arrested on a warrant when he failed to respond to a court summons for the charge. *Id.* He also told the investigator that his mother appeared in court and told the court that the push was an unintended accident and the charge was dismissed. *Id.*

⁶ There is another notable example of him minimizing his conduct. Regarding his 2011 arrest and charge for Driving Under the Influence and Negligent Use of a Deadly Weapon, the Individual testified that he “was parked, under the influence, but they got me for [Driving Under the Influence] and negligent use because . . . [a] gun was in the back seat [of my vehicle].” Tr. at 49. In the LOI, he reported that he was “parked outside” of a friend’s home, drinking, when an officer arrived. Ex. 6 at 59. However, the police report in the record states that the arresting officer first observed the Individual “travelling . . . at a very slow speed” on the road before stopping “in the roadway and turn[ing] on the emergency flashers.” Ex. 10 at 258.

⁷ The record indicates that he was simultaneously arrested on active warrants for Possession of a Controlled Substance, Probation Violations, Failure to Yield, Burglary, and Shoplifting. Ex. 10 at 262. The Burglary and Failure to Yield charges originated in 2020. *Id.* The Individual reported that some of these charges were wrongfully imputed to him because his brother used his name. Ex. 6 at 68.

⁸ The Individual is reported as making this claim, generally, regarding several charges and arrests brought up during the evaluation. Ex. 7 at 91.

Lastly, the record includes the description the Individual's mother provided to an OPM investigator during a 2023 interview. *Id.* at 279. The mother stated that she and the Individual were arguing. *Id.* When the mother turned to leave the room, the Individual kicked a door with his foot, which "'accidentally' hit her." *Id.* (quotation marks original).

At the hearing the Individual testified that the Battery charge was dismissed because "it was all a misunderstanding," and his mother appeared in court to explain the same.⁹ Tr. at 37. His testimony regarding the incident mirrored what he told the OPM investigator: that he and his brother, who he asserted is addicted to drugs, "got into a shoving match," his mother "got into the middle to break [them] up," and he "ended up pushing her, by accident." *Id.* at 78–79. However, when asked to explain the apparent contradiction between the different versions of the event, the Individual testified that "it was in the heat of the moment" and he could not remember what happened—conceding that he "might have" kicked his mother. *Id.* at 80, 81. He also confirmed that he paid the electricity bill for his mother. *Id.*

Regarding his history of illegal drug use, the Individual testified that he voluntarily obtained treatment for his addiction, and he has not used illegal drugs since 2018. *Id.* at 15, 17; *see also* Ex. 7 at (the Psychologist's conclusion that the Individual "has demonstrated compliance with his treatment program[,] and there is no evidence he has used any illegal substance during his time in treatment). He remains in treatment and continues to use prescription medication to manage his addiction. Tr. at 20. He credited his treatment with his ability to maintain employment. *Id.* He has also been participating in once-a-month counseling as a part of his treatment, which focuses on "moving forward" and reaching goals. *Id.* at 82. He testified that he had recently accomplished one of his goals by re-obtaining his driver's license, which had been revoked upon his 2011 conviction of Driving Under the Influence. *Id.* at 27, 83; Ex. 9 at 139, 235.

He explained that he had recently travelled from his resident state across several other states to resolve an outstanding arrest warrant for a traffic citation from 2014 (which is characterized in the SSC as an arrest on that warrant). *Id.* at 26–27. He surrendered himself in September 2022, and the charges were dismissed due to their age. *Id.* at 26–27, 30. He testified that he learned about this warrant in 2020 when he was arrested on a different warrant for a 2018 charge for possession of cocaine. *Id.* at 84; *see also id.* at 33–34. He stated that this was the first time he had ever proactively resolved a warrant by turning himself in, which represented a "big change." *Id.* at 85. He testified that he has "never done as good as [he is] now," which is challenging, but he is motivated by "trying to live a better life." *Id.* He testified that he has been performing well in his current employment, which includes training others, and he has received positive performance evaluations. *Id.* at 86–87.

V. ANALYSIS

A. Guideline J Considerations

⁹ At the hearing, he also initially denied, generally, the allegations contained in Paragraph 5 of the SSC, which included the Battery on Household Member charge, by testifying that the crimes were committed by a different person with the same name. Tr. at 37.

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (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.

I find that none of the above mitigating conditions apply to resolve the Guideline J concerns. I first note that neither ¶ 32(b) nor ¶ 32(c) apply to resolve the security concerns. There is no evidence that the Individual was pressured or coerced into committing criminal conduct, and, aside for a few instances, the Individual does not dispute that he committed most of the acts identified in the SSC.

Regarding the remaining two factors, ¶ 32(a) and ¶ 32(d), the evidence in the record regarding his recent positive conduct since 2020 is offset by his long history of criminal conduct and his continuing tendency to minimize his conduct, which leaves me doubtful regarding his rehabilitation, reliability, trustworthiness, and good judgment. I first note that approximately four years have elapsed since his criminal charge for Battery on a Household Member, which is his most recent criminal charge unrelated to a failure to appear. Since then, it appears that he has maintained positive employment, worked to improve his position in life, maintained sobriety from illegal drug use, and avoided being implicated in any criminal conduct. There is therefore evidence of a passage of time without recurrence of criminal activity. However, I must also consider evidence that weighs against mitigating the concerns. His criminal behavior spans approximately fourteen years, and there is no evidence that unusual circumstances are to blame for his conduct. Furthermore, he did not resolve the most recent outstanding warrant until approximately two years before the hearing, when he travelled across several states to resolve it, despite allegedly learning of the issue in 2020 when he was arrested on an outstanding warrant.

There is also significant evidence in the record of his tendency to minimize his involvement in criminal conduct, which I find concerning. He denied being the suspect in a report for Telephone Harassment in 2012 in his LOI response, and he again denied it during the hearing before finally admitting it after being questioned regarding a written report of his conduct. He similarly denied, before and during the hearing, that he was involved in a 2013 Larceny before he admitted to the conduct. Without being confronted with the exhibit evidence in the record, the Individual would have continued to deny his involvement in these incidents. And I am concerned that he did not candidly discuss and acknowledge his behavior that led to the most recent 2020 charge of Battery

on a Household Member. I do not find his testimony credible regarding the circumstances of his arrest because the descriptions of the incident in the record from his mother substantially conflict with his description, and he failed to resolve the conflict at the hearing. The Individual did not provide a convincing explanation for why his description, in which he claimed he mistakenly pushed his mother when arguing with his brother, differed so significantly from his mother's description of him arguing with her and, according to her statements in the police report, intentionally kicking her. Furthermore, while his mother's later account to the OPM investigator characterized his conduct as a mistake, neither his testimony nor her statements in the record explain why law enforcement was contacted as a result if it was a mistake or misunderstanding. And neither the mother's description of the incident to the OPM investigator nor the police report describe the Individual's brother being present, which further undermines the Individual's testimony. When I consider the inconsistencies with the fact that the Individual has, in the past, used his brother's name in an attempt to avoid legal consequences, I am very skeptical of his testimony. The issue of the conflicting narratives remains unresolved, and based on the other instances referenced above, I have doubt regarding his reliability, trustworthiness, and willingness to accept accountability for his past criminal conduct.

Based on the above, I find that a relatively short period of time has passed since the Individual resolved his outstanding criminal charges given the context of his significant history of criminal conduct, failure to accept accountability by failing to appear in court to resolve his criminal charges, and continuing tendency to minimize his conduct. I also conclude that the record does not demonstrate that the circumstances surrounding his conduct were unusual. Lastly, I find that the Individual has not demonstrated rehabilitation nor resolved the doubt regarding his reliability, trustworthiness, or good judgment.

Accordingly, I conclude that the Individual has not resolved the Guideline J security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals