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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: August 16, 2024) Case No.: PSH-24-0181
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Issued: January 17, 2025

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “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, entitled “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 granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In March 2023, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 9. In the QNSP, the Individual reported arrests for numerous criminal offenses between 2009 and 2020, including an October 2011 conviction for Burglary of a Dwelling (four counts), Intimidation of a Witness, and Use of a Telephone to Harass,² for which he received a seven-year prison sentence.³ *Id.* at 96–103.⁴ Additionally, when asked if he had ever served in the military, the Individual answered “No.” *Id.* at 83. The ensuing background

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

² The Individual indicated that each charge was a felony. Ex. 9 at 97.

³ During an enhanced subject interview (ESI) with an investigator on July 31, 2023, the Individual stated that his total incarceration time for these convictions was approximately five years (April 2009 to July 2014). Ex. 10 at 184–85.

⁴ 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.

investigation uncovered additional charges, arrests, citations, and warrants attributed to the Individual from 1998 to 2020 that he did not disclose on the QNSP. Ex. 10 at 235–68. The Individual also failed to disclose his first-born daughter on the QNSP.⁵ *Id.* at 183–84.

The Individual subsequently underwent a psychological assessment with a DOE consultant Psychiatrist (DOE Psychiatrist) in early April 2024. Ex. 7. Later that same month, the DOE Psychiatrist issued a report (Report) in which he opined that the Individual met sufficient criteria for a diagnosis of Antisocial Personality Disorder (APD), as set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision (DSM-5-TR)*. *Id.* at 58–59. He further stated that this condition “has adversely affected [the Individual’s] judgement or reliability in the past, and there is a significant risk it would do so in the future.” *Id.* at 59.

Due to unresolved concerns, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline I (Psychological Conditions) and Guideline J (Criminal Conduct). Ex. 1. It also informed the Individual that he was disqualified from holding access authorization pursuant to the Bond Amendment, 50 U.S.C § 3343(c)(1)(A). *Id.*

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted ten numbered exhibits (Ex. 1–10) into the record and presented the testimony of the DOE Psychiatrist. The Individual did not submit any exhibits and testified on his own behalf. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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).

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

⁵ The Individual was a teenager at the time of his first-born daughter’s birth and indicated that she was “born out of wedlock.” Ex. 10 at 183–84.

clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting her 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the SSC, which set forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline I and Guideline J of the Adjudicative Guidelines as well as the Bond Amendment. Ex. 1.

The Bond Amendment states, in pertinent part, that, absent a waiver, an agency may not grant or renew a security clearance for an individual who “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year.” 50 U.S.C. § 3343(c)(1)(A); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10, 2022) (DOE Bond Amendment Guidance) (noting additional guidance regarding the waiver process). In citing the Bond Amendment, the LSO relied upon the Individual’s incarceration from April 2009 to July 2014. Ex. 1 at 5.

Guideline J addresses criminal activity, which can create doubts about a person’s judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. Furthermore, it calls into question a person’s ability or willingness to comply with laws, rules, or regulations. *Id.*

In addition to the Individual’s April 2009 arrest and five-year incarceration related to the Burglary of a Dwelling (four counts), Intimidation of a Witness, and Use of a Telephone to Threaten or Harass felony charges, the LSO also cited the following in support of the use of Guideline J:

- 1) Three citations and/or charges for Criminal Damage between 2004 and 2009;
- 2) A March 2007 charge of Disorderly Conduct and Refusing to Obey or Assist;
- 3) An April 2007 arrest and charge on a Warrant for Being a Fugitive from Justice for Army Desertion (Felony);
- 4) An October 2007 arrest and charge of Aggravated Assault (Felony);
- 5) A March 2008 arrest and charge of Distribution of an Imitation Controlled Substance, Burglary of a Dwelling (three counts), Bribery of a Witness, and Use of a Telephone to Harass;
- 6) A June 2008 arrest and charge of Resisting, Evading, and Obstructing an Officer (Felony);

- 7) A July 2009 charge of Receiving/Transferring a Stolen Vehicle Attempt (Felony);
- 8) An August 2016 probation violation for testing positive for cocaine;
- 9) A January 2017 arrest and charge of Shoplifting and Assault;
- 10) A January 2017 arrest and charge of Probation Violation;
- 11) Fourteen instances of traffic-related arrests, charges, and/or citations between 1998 and 2020;⁶
- 12) Twenty-four charges and/or warrants issued between 2007 and 2018 for either Failure to Appear (FTA), Failure to Comply (FTC), or Failure to Pay (FTP); and
- 13) Fourteen charges and/or arrests for Contempt of Court between 2005 and 2007.⁷

Ex. 1 at 5–9; Adjudicative Guidelines at ¶ 31(b), (d).

Guideline I indicates that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. In support of citing Guideline I, the LSO relied upon the DOE Psychiatrist’s April 2024 determination that the Individual met “the criteria for the [DSM-5-TR] diagnosis of [APD,] which is a condition that impairs his judgment, reliability, and trustworthiness.” Ex. 1 at 5; Adjudicative Guidelines at ¶ 28(b).

IV. Findings of Fact

As stated above, the Individual met with the DOE Psychiatrist in April 2024. Ex. 7 at 48. During the clinical interview (CI), the Individual provided further information regarding his past criminal history. *Id.* Specifically, the Individual reported that starting in approximately 2008, he became addicted to opioids and “began stealing to finance his drug habit,” which resulted in “multiple drug related arrests.” *Id.* at 50. Regarding his April 2009 felony burglary arrest, the Individual stated that he broke into homes with the intent to “steal[] valuable things that he could sell for drug money.” *Id.* at 51. The Individual was imprisoned from April 2009 through July 2014. *Id.* He recalled experiencing opioid withdrawal symptoms while in prison and represented that he did not take any opioid medications during his approximate five-year incarceration. *Id.* He acknowledged “relaps[ing] into using pain pills” after being released from prison, but reported that in July 2018, he began taking methadone to treat his opioid addiction. *Id.* at 52. He stated that

⁶ In the SSC, the first instance of a traffic-related citation attributed to the Individual occurred in 1998; however, at that time, the Individual would have been approximately ten years old. *See* Ex. 1 at 6; Ex. 9 at 74. The Individual disputed the accuracy of this allegation at the hearing. Tr. at 14. I find that this particular allegation relating to the 1998 traffic-related incident is not attributable to the Individual. As such, it was not properly raised by the LSO, and I will not analyze it herein.

⁷ The SSC also alleged that the Individual was charged and/or arrested on four separate instances for unspecified warrants between 2007 and 2011. Ex. 1 at 6–8.

he did not like methadone “because it made him feel sedated” and tried other opioid treatments; however, he began the methadone treatment again in approximately early 2021 and as of the date of the evaluation was still currently taking it.⁸ *Id.*

In the Report,⁹ the DOE Psychiatrist indicated that he had reviewed the Individual’s personnel security file and noted the following details regarding the Individual’s criminal activity prior to his April 2009 incarceration. *Id.* at 53–55. In November 2004, the Individual was suspected of battery against a household member after the victim alleged that he “beat her and kicked her in their home.” *Id.* at 54. In September 2005, the Individual was charged with Felony Criminal Damage to Property after it was alleged that he went to the victim’s parents’ house, “broke the TV and stereo and other articles, cut up stuffed animals, and put [the victim’s] clothes in the bathtub after filling it with water and bleach.” *Id.* In November 2005, the Individual was suspected of battery and accused of “grabb[ing] [the victim]¹⁰ by the hair, thr[owing] her to the ground, stomp[ing] on her, and kick[ing] her on the side of stomach.” *Id.* After enlisting in the military in March 2006, a warrant was issued for the Individual’s arrest eight months later “for being a deserter.”¹¹ *Id.* In October 2007, the Individual was arrested and charged with Felony Aggravated Assault after he allegedly shouted and waved a handgun at an individual. *Id.* In January 2009, the Individual was accused of burglarizing his girlfriend’s home, and several days later, a court placed a mutual permanent injunction and protection order against the Individual and his girlfriend. *Id.* at 55.

Furthermore, the DOE Psychiatrist noted the following details regarding the Individual’s post-incarceration criminal activity. *Id.* at 51, 55–56. In November 2014, the Individual was suspected of battery after his girlfriend alleged that he “punched her in [her] face several times.”¹² *Id.* at 55. In August 2016, the Individual tested positive for cocaine in a random drug test while on probation.¹³ *Id.* at 51. In October 2016, the Individual’s landlord filed an incident report accusing the Individual of verbal assault and harassment. *Id.* The landlord alleged that he “went to collect rent from [the Individual] and his spouse since they were behind on rent[.]” at which point the Individual “became upset and threatened to burn down the house.” *Id.* In January 2017, the Individual was charged with Shoplifting and Assault after a “Walmart associate observed [him] take [groceries] and leave the store without paying.” *Id.* at 55–56.

⁸ The Individual noted that his methadone dosage as of the date of the CI was 120 milligrams per day. Ex. 7 at 52.

⁹ The Report cites to a number of alleged or suspected criminal incidents that were not raised in the SSC. *See* Ex. 7 at 53–56. I consider these allegations only insofar as they are applicable to the DOE Psychiatrist’s diagnosis of APD.

¹⁰ The victim in this instance was the “mother of [the Individual]’s unborn child.” Ex. 7 at 54.

¹¹ As noted previously, the Individual answered “No” on the March 2023 QNSP when asked if he had ever served in the military. Ex. 9 at 83.

¹² Approximately three months after that incident, the Individual and his girlfriend were married. Ex. 7 at 55.

¹³ During the CI, the Individual asserted that he “shared a cigarette with a friend,” but “did not know cocaine was in it.” Ex. 7 at 51.

Regarding his work with his current employer, the DOE Psychiatrist noted in the Report that the Individual: received a letter of reprimand for “No Call/No Show” in July 2023; “arrived significantly late to work . . . on at least three occasions and called in with unscheduled absences on at least [twelve] occasions” between October 9, 2023, and the date of the Report; failed to report for a scheduled overtime; failed to answer his supervisor’s calls and text messages for three days in January 2024; and was suspended without pay for three working days in mid-January 2024. Ex. 7 at 56; *see also* Ex. 6 (Incident Report documenting the Individual’s January 2024 suspension).

In the Report, the DOE Psychiatrist noted that APD is indicated when three or more of the diagnostic criteria set forth in the *DSM-5-TR* are met. Ex. 7 at 60. He found that the Individual met all seven criteria for the APD diagnosis.¹⁴ *Id.* at 58–59. The DOE Psychiatrist found that APD “has adversely affected [the Individual’s] judgement or reliability in the past, and there is a significant risk it would do so in the future.” *Id.* However, the DOE Psychiatrist further opined that the Individual’s “symptoms of this disorder are diminishing as he maintains his abstinence from illegal drugs and gradually matures in his roles of husband, father and employee.” *Id.*

V. Hearing Testimony

At the hearing, with the exception of the 1998 arrest that was improperly raised by the LSO, the Individual accepted responsibility for the arrests, citations, and/or warrants listed in the SSC. *Id.* at 14, 46. He indicated that at the time of his first arrest in 2004, his parents had recently divorced, and he was “just rebelling.” *Id.* at 15. The Individual confirmed that he joined the military in 2005 and acknowledged that he was arrested for desertion after he “didn’t go back” to his assigned duty station while on leave. *Id.* at 32–33. He testified that he began taking prescription painkillers in 2006 or 2007, began to obtain pills illegally in 2007, and transitioned to heroin in 2008. *Id.* at 16, 18, 46.

The Individual stated that in April 2009, he was arrested after he burglarized his ex-girlfriend’s house “to get stuff to sell for money.” *Id.* at 18–19. On the day he was scheduled to be sentenced for the Felony Burglary charge, the Individual testified that he was also charged with Felony Intimidation of a Witness after calling the courthouse and “sa[ying] that . . . people were going to go over there to shoot.” *Id.* The Individual confirmed that he was incarcerated from April 2009 to July 2014. *Id.* at 22.

The Individual testified that during his first year of incarceration, he still obtained opioid pills and heroin periodically. *Id.* at 24. He further indicated that once he was transferred to new prison facility after approximately two years, he still obtained opioids and heroin, but not “on the level of what it was when [he] first got incarcerated.” *Id.* at 25. The Individual testified that at the time

¹⁴ Specifically, the DOE Psychiatrist concluded that the Individual met the following diagnostic criteria: (1) failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest; (2) deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure; (3) impulsivity or failure to plan ahead; (4) irritability and aggressiveness, as indicated by repeated physical fights or assaults; (5) reckless disregard for safety of self or others; (6) consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations; and (7) lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. Ex. 7 at 58–59.

of his release from prison in July 2014, he was “clean” and had not taken any type of opioid in two or three years. *Id.* at 26. However, after “about a year,” the Individual acknowledged that his drug use began again.¹⁵ *Id.* The Individual also acknowledged that he “kept messing up with [his] probation” and was arrested numerous times after his release from prison. *Id.* at 27. Regarding the 2016 probation violation related to a positive drug test, the Individual indicated that someone at a party offered him a cigarette with cocaine in it, and he “took it.” *Id.* at 47. When asked to clarify whether he knew that cocaine was in the cigarette, the Individual stated that he “knew drugs were around, and [he] got the cigarette and [] tasted it, but [] still did it when [he] could have put it away or said no.” *Id.* at 48.

The Individual denied having “punched” his wife in 2014 and stated that “[i]t was just one of those things where [they] were fighting[,] and she called the cops.” *Id.* at 53. The Individual also denied having told his landlord that he was going to burn down his house in 2016, stating that he “would have been burning down [his] own house[;] [the landlord] just owned the land.” *Id.* at 54. Regarding the January 2017 Shoplifting charge, the Individual testified that he needed to steal food because he “was having a hard time finding a job” and “didn’t have [anything] at home.”¹⁶ *Id.* at 27–28. He indicated that he was also charged with Assault because he “pushed around” someone that wouldn’t let him out of the store. *Id.* at 49. The Individual confirmed that his last arrest was in January 2020 and indicated that his current job and sobriety have helped him avoid unlawful behavior. *Id.* at 29. He asserted that after “g[etting] on the methadone program[,]” he has generally abstained from opioid use for approximately the last four years.¹⁷ *Id.* The Individual stated that he has been “tapering off [methadone] for about three months” and intends on being completely off methadone in another three months. *Id.* at 30–31.

The Individual acknowledged that he failed to report his military service and daughter on the QNSP, but indicated that completing the questionnaire was “stressful” and that he “was just trying to get it done.” *Id.* at 34–35. Regarding the July 2023 No Call/No Show letter of reprimand that he received from his employer, the Individual indicated that he missed a day of work because he was camping and couldn’t “get ahold of [his] boss.” *Id.* at 36. The Individual also acknowledged that he called-in with unscheduled absences twelve times and reported to work at least half a day late on three occasions after October 9, 2023.¹⁸ *Id.* at 37–38. Regarding his failure to report for a scheduled overtime, the Individual asserted that this particular day “was a big problem for everybody . . . [because] it [was] at two o’clock in the morning.” *Id.* at 38. The Individual acknowledged that he received a three-day suspension in January 2024 for “unscheduled absences.” *Id.*

¹⁵ The Individual indicated that his drug use post-incarceration was less than it was pre-incarceration. Tr. at 26.

¹⁶ The Individual denied using drugs at the time of this arrest. Tr. at 48.

¹⁷ The Individual testified that he first began the methadone treatment in 2018. Tr. at 49. The Individual also testified that he was prescribed approximately six opioid pills in 2023 for an ear infection and took these pills because he “thought it was okay for a short term.” *Id.* at 51. The Individual stated that he “shouldn’t have done [this],” but noted that he has “these little lapses of judgment.” *Id.* at 52.

¹⁸ Regarding the three occasions that he reported to work at least half a day late, the Individual asserted that he still informed his supervisor that he was going to be late each day. Tr. at 37–38.

When asked why he has continued to have issues at work, the Individual stated that he “admit[s] [to] everything completely” and acknowledged that he “should be . . . doing way better.” *Id.* at 40. He further testified that many of the issues with his unscheduled absences were caused by the fact that he was “not getting along with [his supervisor]” and “didn’t want to be [at work].” *Id.* He asserted that he has since moved to a different department at work and “love[s] it now.” *Id.*

The Individual testified that although he disagreed with the DOE Psychiatrist’s diagnosis of APD initially, once he reviewed the Report, he agreed that he likely met the criteria for that diagnosis. *Id.* at 42–43. He asserted that he is “doing better” now because he is having fewer issues at work and has only been “pulled over” for “normal things,” such as speeding, recently. *Id.* at 43–44. The Individual further indicated that he has not received any type of psychiatric or psychological treatment, other than for drug use, in the last four years. *Id.* at 44.

After hearing the testimony of the Individual, the DOE Psychiatrist testified. The DOE Psychiatrist stated that although he believes the Individual is “showing continued gradual improvement[,] [i]n general, there’s no significant change [in the Individual’s APD diagnosis] since [the CI].” *Id.* at 64. The DOE Psychiatrist opined that “[t]he time frame of improvement in diagnoses like [APD] is generally a very gradual diminishment in symptoms.” *Id.* at 63. Therefore, because he had met with the Individual only eight months prior to the date of the hearing, the DOE Psychiatrist opined that this was “not a big amount of time difference” when considered in the context of the “gradual time frame” required for the diminishment of APD symptoms. *Id.* The DOE Psychiatrist additionally testified that he believed that the Individual’s hearing testimony had revealed “some persistent dishonesty” which occurred recently enough to be significant to the status of the Individual’s APD. *Id.* He noted that the Individual testified that he used opioids while incarcerated; however, during the CI, the Individual denied using opioids at that time. *Id.*; *see also* Ex. 7 at 51.

The DOE Psychiatrist further testified that for the Individual’s APD to be in sustained remission, the Individual would need to show “continued improvement over a few years.” Tr. at 65. He stated that APD is “a difficult disorder to be completely free of once you’ve gotten it[,]” and although symptoms may diminish with age, they are “slow to go away completely.” *Id.* at 66–67. The DOE Psychiatrist also noted the difficulty in treating APD, testifying that “[i]n general, [APD] does not respond well to psychotherapy” as individuals with APD “almost become more skilled manipulators and more skilled at doing their antisocial behavior” in therapy.¹⁹ *Id.* at 68. He further cited the concern of “flare-ups, mainly under stress,” that can “pop up” in individuals with APD. *Id.* at 64. He concluded that it is likely for the Individual to continue his slow improvement, but he emphasized that it would be “very slow.” *Id.* at 68.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c), the Adjudicative Guidelines, the Bond Amendment, and the DOE Bond Amendment Guidance. After due deliberation, I have determined that the Bond

¹⁹ The DOE Psychiatrist noted that “life change,” as opposed to therapy, is more effective at treating APD. Tr. at 68.

Amendment disqualifies the Individual from holding a security clearance, and that the Individual has not mitigated the security concerns raised by the LSO under Guideline J and Guideline I. I cannot find that granting the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be granted.

A. Guideline I

Conditions that may 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.

Here, the DOE Psychiatrist diagnosed the Individual with APD after the CI and testified that this diagnosis remained unchanged at the time of the hearing. The Individual testified that he is not currently receiving any treatment for his APD, and according to the DOE Psychiatrist, this is a condition that is difficult to treat as it does not respond well to traditional therapy. Additionally, in the Report, the DOE Psychiatrist opined that there is a significant risk that this condition will continue to adversely affect the Individual's judgment or reliability. At the hearing, he further noted the risk of stress-induced "flare-ups" that can occur in individuals with APD. As such, I cannot find that the Individual has established the applicability of mitigating conditions (a), (b), or (e). *Id.* at ¶ 29(a)–(b), (e).

Furthermore, the DOE Psychiatrist testified that although the Individual is showing gradual improvement, this improvement is likely to continue at a "very slow" pace because APD is not a temporary condition, but a condition in which symptoms gradually diminish over the course of years, not months. As such, the DOE Psychiatrist concluded that the Individual would need to show continued improvement over the next few years for his condition to be in sustained

remission. For these reasons, I cannot find that the Individual has established the applicability of mitigating conditions (c) or (d). *Id.* at ¶ 29(c)–(d).

For the foregoing reasons, I cannot find that the Individual has mitigated the security concerns arising under Guideline I.

B. Guideline J

Conditions that may 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) there is 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 recognize that much of the Individual's criminal history was linked to his drug use. I also note that with the exception of the six opioid pills he took in 2023, he asserts that he has been abstinent from opioids for approximately four years²⁰ and has not been charged with any criminal offense in approximately five years (several traffic-related charges in January 2020). The Individual's criminal conduct, however, spans decades and continued to persist even after he was released from the five-year prison sentence in 2014. Given his lengthy criminal history in relation to the relatively short period of time that he has refrained from criminal activity, I cannot find that so much time has elapsed since the criminal behavior happened. *Id.* at ¶ 32(a). Furthermore, the Individual's criminal conduct post-incarceration cannot solely be attributed to drug use as he admitted that he was not under the influence of drugs at the time of his January 2017 arrest for Shoplifting and Assault. As such, I cannot find that the criminal conduct 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. *Id.*

Turning to mitigating condition (d) addressing rehabilitation, as stated above, I recognize that the Individual has not engaged in criminal activity in approximately five years, and further, he has

²⁰ I note that the Individual did not submit any evidence to corroborate the assertion that he is currently abstinent from opioids.

obtained steady employment with the DOE contractor, which he testified aided him in remaining a law-abiding citizen. However, I note that the Individual's employment record with the DOE contractor is not entirely positive, and the Individual has not submitted evidence that he attempted to provide any restitution to the victims of his crimes or engaged in any constructive community involvement. Furthermore, I note, as explained above, the Individual is not rehabilitated from his APD diagnosis, which appears to be inextricably linked to his criminal conduct. As such, I cannot find that the Individual established the applicability of mitigating condition (d). *Id.* at ¶ 32(d).

Regarding the remaining mitigating factors, I have no evidence before me indicating that the Individual was pressured or coerced into committing the alleged criminal acts. *Id.* at ¶ 32(b). Furthermore, with the exception of the 1998 charge, which I do not consider here, the Individual accepted responsibility for the alleged offenses listed in the SSC. Accordingly, I cannot conclude that the LSO's allegations lack reliable evidence to support a finding that the Individual committed the offenses. *Id.* at ¶ 32(c).

For the foregoing reasons, I cannot find that the Individual has mitigated the security concerns arising under Guideline J.

C. The Bond Amendment

The Bond Amendment states, in pertinent part, that an agency may not grant or renew a security clearance for an individual who "has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year." 50 U.S.C. § 3343(c)(1)(A). However, a waiver from disqualification may be granted "if there are mitigating factors." *Id.* § 3343(c)(2). "Any such waiver may be authorized only in accordance with (A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or (B) the [A]djudicative [G]uidelines." *Id.*; *see also* DOE Bond Amendment Guidance.

The Individual did not deny the fact that he was sentenced and served a term of imprisonment exceeding one year. Furthermore, as stated above, the Individual failed to mitigate the related concerns under Guideline J. Accordingly, I find that the Individual is, as a result, disqualified from holding a DOE access authorization under the Bond Amendment, and no waiver of the disqualification is warranted.

VI. Conclusion

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 have found that the Bond Amendment disqualifies the Individual from holding a security clearance, and the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline J and Guideline I. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the

Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals