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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: February 19, 2019	)	Case No.:	PSH-20-0045
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Issued: January 7, 2021

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's security clearance should be granted.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) on January 4, 2017, in connection with his application to obtain a security clearance. Exhibit (Ex.) 11. The Individual disclosed on the e-QIP that, from 1995 to 2000, he had numerous criminal charges, most of which involved the use of alcohol, including an arrest for Driving While Intoxicated (DWI), an arrest for Driving Under the Influence (DUI), and two incidents involving domestic violence against a household member. *Id.* at 42–49. In addition, during an Enhanced Subject Interview (ESI) conducted in 2018, the Individual disclosed that after submitting the eQIP, he was arrested on May 8, 2017, for domestic violence against his girlfriend. Ex. 12 at 74.

The LSO began the present administrative review proceeding by issuing the Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in

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<sup>1</sup> 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.

order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of five witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-20-0045 (hereinafter cited as "Tr."). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12. The Individual submitted 13 Exhibits, marked as A-1 through D-3.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Under Guideline J, "[c]riminal 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. With respect to Guideline J, the LSO cited the Individual's arrests and criminal charges of a DWI in 1995 and DUI in 1996, respectively; aiding and abetting an intoxicated minor in 1996; disorderly conduct and unlawful use of a firearm in 1999; a criminal complaint filed by the Individual's former spouse in 1999; arrests for separate incidents of battery on a household member in February 2000 and July 2000; "Sexual Contact of a Minor" in July 2000; possession of marijuana and drug paraphernalia in 2008; and failure to comply with specific requirements in 2008. Ex. 1 at 1–2. The LSO also cited the Individual's arrest in May 2017 due to a domestic violence incident toward his girlfriend, and an associated Temporary Order of Protection filed by the Individual's girlfriend in May and June 2017. Ex. 1 at 2. In light of the Individual's documented history of arrests, the LSO's invocation of security concerns under Guideline J is justified.

## **III. REGULATORY STANDARDS**

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

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his 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. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **IV. FINDINGS OF FACT**

In May 2017, the Individual was arrested for domestic violence against his girlfriend. Ex. 1 at 2; Ex.9 at 5–6. His girlfriend subsequently filed a Temporary Order of Protection against him. Ex. 9 at 8–11. The Individual filed a Personnel Security Incident Report regarding the arrest in May 2017, and an Incident Report in June 2017 regarding the TRO. Ex. 8 at 2; Ex. 9 at 2. In an ESI conducted on February 21, 2018, the Individual told an Office of Personnel Management (OPM) investigator that he was participating in a domestic violence counseling program consisting of 24 classes, and he sought additional counseling services through the Occupational Medicine Program at his employer. Ex. 12 at 74. In addition to the 2017 domestic violence arrest, the LSO listed eight alcohol-related arrests between 1995 and 2008, and one non-alcohol-related arrest in 2008. The Individual acknowledged his extensive record of arrests and criminal charges, and only disputes one arrest listed on the Summary of Security Concerns (SSC) for an alleged incident on April 19, 2008.<sup>2</sup> Tr. at 143–44, 154–56.

The Individual admitted that the 2017 domestic violence incident occurred when his frustration reached a breaking point because he caught his girlfriend using drugs again after she had overdosed a month earlier. Tr. at 103. He stated he was already traumatized by her overdose because he had to call the ambulance and watch the paramedics take her out of their bedroom. *Id.* He stated that, since his own overdose was the impetus that led to his sobriety, he had hoped his girlfriend's prior overdose would have the same effect on her, but it did not. *Id.* at 103–04. The Individual testified that the 2017 incident made him realize that he still struggled with anger issues that he wanted to resolve, so he began participating in a domestic violence re-education program prior to being directed to do so by court order. *Id.* at 108. He also simultaneously initiated individual counseling on his own accord. *Id.* at 109, 113. The Individual submitted a court order verifying that his domestic violence case was closed on July 4, 2018, because he had complied with all terms of his sentence, including completion of probation and a re-education program. Ex. A-1. The Individual also submitted copies of the domestic violence re-education program curriculum and materials. Ex. B-3; Tr. at 110–11.

The Individual admitted to all SSC allegations except one arrest in 2008. He asserted that all of the incidents from 1995 through 2008 involved alcohol or drug use, except for one incident in April 2008 for failure to show proof of automobile insurance subsequent to a speeding ticket. Tr. at 141–50, 142–43; Ex. 1 at 2. The Individual testified that, in response to his pleading guilty to

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<sup>2</sup> The Individual consistently disputes only one incident in the SSC which was an arrest on April 19, 2018, for possession of marijuana (referred to as THC) and use or possession of drug paraphernalia. Ex. 1 at 2; Tr. at 143–44, 154–56. In an ESI conducted in 2018, the Individual told the OPM investigator that he was not aware of any such arrest for possession of marijuana. Ex. 12 at 78; Tr. at 156–57. He stated he has never used marijuana (THC) and that his previous drug use consisted of only cocaine. *Id.* At the hearing, he testified that he has never been arrested for possession of marijuana. Tr. at 156–57. In light of the Individual's consistent denial of this charge, and because of its remoteness in time, I am not going to consider this charge in evaluating the circumstances of the case.

the 2000 charge of “Sexual Contact of a Minor”, he was required to register annually as a sex offender for 20 years. That requirement ends in 2022. Regarding the underlying incident, the Individual testified that, prior to his one-time sexual act with a teenager, he had consumed large quantities of alcohol for three days straight after he discovered that his cousin committed suicide. Tr. at 145, 149–50; Ex. 1 at 1–2. He has completed all of the terms of the court imposed requirements to date. Tr. at 145, 148; Ex. 10 at 22–23.

The Individual testified that he has maintained his sobriety since January 5, 2008. Tr. at 145. He submitted a copy of a medallion commemorating his 12 years of sobriety. Ex. B-1; Ex. B-2. He testified that, after his mother’s death, he relapsed until he had a drug overdose that became the turning point in his life which led him to join Narcotics Anonymous (NA) in 2008. Tr. at 99–101, 158. He testified that he is also an NA sponsor. *Id.* at 106, 159. In addition, he testified that he and his brother introduced and implemented a culturally-based 12-step program in his community, and the Individual serves as a co-leader of the program which meets multiple times per week. *Id.* at 117–18; *see* Ex. B-5 at 2. He explained how the program focuses on the background and experiences of his culture, which gave him the idea to introduce the program to his community when he learned that his local Alcoholics Anonymous (AA) group was not effective in his community. Tr. at 118. The Individual testified that the culturally-based program is more readily accepted than AA, because he and other group members can easily identify with the program’s cultural components. *Id.* at 118–21; Ex. B-5.

The Individual concluded his testimony by asserting that he uses his musical talents to perform with his band at community events to raise awareness for mental health, domestic violence, suicide, and substance abuse issues. He also speaks to the community, including his co-workers, about mental health issues, suicide, and domestic violence. Ex. C-3; Ex. D-1; Ex. D-2; and Tr. at 132–36.

The Individual’s Counselor testified that the Individual initiated counseling with him through an Employee Assistance Program in August 2017. Tr. at 9–10; Ex. B-4. The Counselor stated that the Individual told him he sought counseling after the domestic violence incident because he recognized his inappropriate response to the circumstances. Tr. at 10. The Counselor opined that, due to the effects of being raised by his father who had PTSD and alcohol issues, the Individual experienced his own PTSD symptoms. Tr. at 11, 14–15; Ex. B-4 at 1–3. The Counselor testified that he worked with the Individual to overcome his trauma and improve his communication skills, problem solving abilities, and his parenting skills. Tr. at 10–12; Ex. B-4 at 1–3. The Counselor opined that the Individual has made significant progress, is highly motivated, and is a quick learner who has learned how to apply specific skills to successfully manage his anger and improve his family relationships with his daughter and his girlfriend. Tr. at 14.

The Counselor concluded that the Individual has learned how to control his behavior to prevent the recurrence of criminal conduct, including domestic violence. Tr. at 17–20, 24–25. He explained that the Individual’s PTSD symptoms affected the function of his brain, but that he has learned how to modify those effects on his behavior, including through participation in a stable and supportive environment such as his recovery group. Tr. at 24. The counselor testified that the Individual has demonstrated much better problem-solving skills; and, over the past two years, when the Individual has experienced frustration, he has contacted the counselor for assistance. Tr.

at 20, 27. The counselor concluded that the Individual has been able to stay committed to his relationship despite very trying times with his girlfriend, used effective communication skills and managed his anger, and has not felt the urge to return to alcohol use as a coping mechanism. Tr. at 25. The Counselor further opined that he has no concerns that the Individual can continue to apply effective problem-solving methods in his relationship while maintaining sobriety in the future. *Id.*

The Counselor testified that the Individual had reached a point where he no longer needed counseling services, so they do not have future sessions scheduled. Tr. at 22, 26. He testified that he still maintains contact with the Individual as a friend and as a mentor, and he last saw the Individual a few days prior to the hearing. *Id.* at 26–27. The Counselor stated that whenever the Individual has questions or issues, they meet and discuss ways to handle stress. *Id.* at 27.

The Individual's NA Sponsor testified that he has been the Individual's sponsor for the past 13 years. *Id.* at 30. The Sponsor testified that he has developed a very close relationship with the Individual, focused on guiding the Individual to his own understanding of the 12 steps and associated spiritual principles. *Id.* at 31.

The Sponsor also testified that he believes the Individual has a low chance of relapse of drug or alcohol use because the Individual continues to stay engaged with the NA fellowship, attends 12-step meetings, and stays in contact with the Sponsor. Tr. at 32, 34–35, 38. The Sponsor stated that the Individual has discussed the cultural 12-step program with the Sponsor, and he confirmed that the Individual is a leader for other people in his community who have problems with drug or alcohol use. *Id.* at 34–35.

After the 2017 domestic violence incident, the Sponsor testified that the Individual contacted him immediately. Tr. at 35. He stated that the Individual expressed regret for the incident, and they continued working together for many months concerning the Individual's related issues to prevent a reoccurrence. *Id.* at 36. Moreover, he testified that he and the Individual discussed the Individual's participation in the domestic violence re-education program. *Id.*

The Sponsor asserted that the Individual is reliable, trustworthy, and compliant with rules and regulations. *Id.* at 42–44. He testified that he has previously hired the Individual to provide professional services at his business location, and the Individual is always reliable, completes every task, charges him a reasonable rate, and complies with all requirements in accordance with his state vocation license. *Id.* at 42–45. The Sponsor continues to maintain contact with the Individual and testified that they last spent time together approximately 2 to 3 weeks prior to the hearing during a regular "catch-up" session where they discuss current happenings in the Individual's life. *Id.* at 40.

The Project Director for an opiate recovery program in the Individual's community testified that he met the Individual at the culturally-based 12-step program. Tr. at 50–51. He testified that he asked the Individual to become a community volunteer because he observed the Individual successfully influence newcomers in 12-step meetings by presenting his stories of hope and resilience in an authentic manner. *Id.* at 51–53. He confirmed that the Individual has assisted him in community events by providing musical performances and sharing his stories. *Id.* at 53. Moreover, the Director testified that he has personally participated in the cultural 12-step program,

and the Individual and his brother have been some of the biggest influences on the Director's own recovery journey. *Id.* at 55. The Director asserted that the Individual has had a significant widespread impact not only in his own cultural community but also in the surrounding communities. *Id.* at 54. The Director testified that the Individual is reliable and trustworthy. He concluded, "I wish there were more carbon copies of him . . . in the community" because it is rare to find people who are as honest and authentic as the Individual. *Id.*

The Individual's brother testified about the 12-step program that they introduced to their community and the Individual's leadership role in this program. The brother confirmed the Individual's explanation that the program is similar to AA, but it includes specific cultural practices and cultural language and traditions that their group members understand and identify with, which makes it more accepted than AA in their community. Tr. at 64–65; Ex. B-5. The brother confirmed the Individual's testimony regarding his involvement in the community and the 12-step program they initiated. Tr. at 66, 67.

The brother testified that he was aware of the 2017 domestic violence incident, along with the Individual's participation in counseling to work on anger management issues. Tr. at 69. He also observed that, during their 12-step program meetings, the Individual spoke frequently about his issues regarding the domestic violence incident. *Id.* He testified that the Individual sought out other participants in their cultural 12-step program who had overcome domestic violence problems, and he spoke to them to learn how to develop solutions to resolve his anger management issues. *Id.* at 69–70. The brother also confirmed that the Individual has been sober for almost 13 years, and his recovery is strong due to the fact that he stays connected to the cultural 12-step program and he has a solid spiritual relationship with his higher power. *Id.* at 71–72. Moreover, he and the Individual maintain regular contact with each other and frequently talk to process their own issues. *Id.* at 69. The brother testified that the Individual has been an important part of the brother's own support system and models the integrity that their 12-step program teaches. *Id.* at 72.

The Individual's girlfriend, who is also the mother of their 11-year-old daughter, testified that she has known the Individual for 12 years and has been living with him since approximately 2013. Tr. at 77, 84, 90. The girlfriend confirmed the Individual's testimony that, his frustration with her substance abuse addiction led to his domestic violence charge. *Id.* at 91. She explained that, "I lied to his face and at that moment, he had fear for our family, love for [our daughter] and I think me" so he became incensed and lost his temper. *Id.* Although the girlfriend sought a Temporary Order of Protection against the Individual after the domestic violence incident, she stated that she did so because of her "anger towards the situation" and "not because I felt that he was after me." *Id.* at 92.

The girlfriend testified that she has no concerns regarding a possible recurrence of domestic violence because she has observed several changes in the Individual's behavior and actions that demonstrate he successfully manages his anger. Tr. at 80–81; 87–88. The girlfriend testified that she "feels very safe and secure around him," and that he is one of the most trustworthy people she knows. *Id.* at 81, 88. She said he successfully applies specific anger management strategies that he learned from his Counselor, including deep breathing techniques, playing his guitar or listening to music, and working on his vehicle or a large project. *Id.* at 80, 89.

Likewise, the girlfriend is not concerned that the Individual will return to criminal activity. Tr. at 88–89. She confirmed that the Individual has been sober since 2008. *Id.* at 78, 88–89. She also stated that the Individual has a very strong support group, and he supports her in her own sobriety. *Id.* at 78, 83. She supported the other witnesses’ testimony that the Individual is a strong leader in his community, including initiating the cultural 12-step program. *Id.* at 84.

The Individual’s supervisor submitted a reference letter in support of the Individual. Ex. C-1. He has known the Individual since 2018, and stated he observed that the Individual’s behavior and intent is “always [to] maintain[ ] a high level of professionalism in the work . . . performed and in the way the crew presented themselves.” *Id.* The supervisor asserted that, due to his strong confidence in the Individual’s ability, he recommended that the Individual become the foreman for two of his crews, and the Individual continues to hold this position. *Id.* The supervisor concluded by stating that “[the Individual] has not once let me down. He has led by example and has always set the standard for others to follow. It is my privilege to count [him] as a peer, employee, and friend.” *Id.* He also won an award for developing and giving a presentation for his employer’s suicide prevention campaign which demonstrates his actions to promote the well-being of his coworkers and his willingness to share his past experiences with family trauma in order to help his colleagues and the larger community. Ex. C-3.

## V. ANALYSIS

The Individual’s criminal record, including multiple arrests for alcohol and drug-related offenses, and a 2017 arrest for domestic violence, raises security concerns under Guideline J of the Adjudicative Guidelines. An individual may mitigate security concerns under Guideline J if:

- (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;

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- (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(a), (d).

I find the two above mitigating conditions under Guideline J are applicable in this case. The Individual’s most recent arrest occurred in 2017, three years prior to the hearing, and all other incidents occurred between 1995 and 2008. In addition, all incidents prior to 2017, except a traffic related offense, were alcohol or drug related and occurred prior to the Individual’s 12-year sobriety. The Individual asserts that the behavior is unlikely to recur because he has been sober for nearly 13 years and no longer engages in criminal behavior. The Individual’s lengthy sobriety was confirmed by his witnesses. Further, the Individual provided evidence that he attended a domestic violence re-education program and initiated individual counseling. The testimony of the

Individual's witnesses supports the Individual's testimony regarding his counseling and attendance at the re-education program.

Other than the 2017 incident, the Individual has had no incidents involving criminal conduct for over 12 years. He acknowledged his prior pattern of criminal behavior and admitted his past problems with alcohol and drug use led to a pattern of criminal conduct. He presented evidence of his sobriety. *See, e.g., Personnel Security Decision*, OHA Case No. PSH-20-0018 (2020) (finding an Individual has mitigated alcohol-related criminal conduct rehabilitation or reformation from an alcohol use disorder diagnosis); *Personnel Security Hearing*, OHA Case No. PSH-13-0062, (2013). For these reasons, I find that the Individual has met the first mitigating condition under Guideline J. *Id.* at ¶ 32(a).

The Individual has also presented evidence of successful rehabilitation under Adjudicative Guideline, ¶ 32(d). As discussed above, there has been a significant passage of time without recurrence of criminal activity. In addition, the Individual has complied with all terms of probation and any sentence that was previously imposed on him by a court. For example, he presented evidence from a court order verifying his compliance with the terms of his sentence for the 2017 incident. Regarding the April 20, 2008 incident, he asserted that the charge was related to his failure to submit proof of automobile insurance during a traffic citation, and testified that he has since complied by providing the court with proof of automobile insurance.

Moreover, the Individual has provided further evidence of successful rehabilitation through his constructive community involvement and positive employment record. This information was confirmed by the Individual's witnesses. Further, in his current job, he has won several awards, including for demonstrating outstanding performance and significant teamwork contributions. He has voluntarily participated in and led activities that promote the safety and security of his colleagues, and mentored other employees, and thereby received recognition in the form of awards as well as a job promotion as attested to by his supervisor in a written statement. For those reasons, I find that the Individual has met the fourth mitigating condition under Guideline J. *Id.* at ¶ 32(d).

Additionally, I find that the Individual has successfully mitigated any concern raised by his 2002 conviction for "Sexual Contact of a Minor." This offense occurred more than 20 years ago, when the Individual was only 21 years old, and there have been no other allegations of sexual contact with a minor in the last 20 years. Further, it occurred under circumstances that are unlikely to recur, because at the time of the incident, the Individual had just buried his cousin, who was also a close friend, and had been drinking heavily at the time due to mourning his cousin. He has now been sober for 12 years. Additionally, the Individual has been compliant with the terms outlined by the court, including registering as a sex offender every year for 20 years and I note that the Individual's requirement to register as a sex offender ends next year. Also, the Individual has a good employment record, as evidenced by his employer spot awards and the laudatory letter from his supervisor. Finally, the Individual has had significant constructive community involvement, including starting the culturally-based, 12-step program and his community volunteerism.

For the foregoing reasons, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline J of the Adjudicative Guidelines.



## **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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be granted. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals