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In the Matter of: Personnel Security Hearing)	
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Filing Date: December 20, 2023)	Case No.: PSH-24-0039
)	
_____)	

Issued: April 10, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. Background

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in April 2022. Exhibit (Ex.) 11. The Individual disclosed that in March 2020, he was arrested and charged with Driving Under the Influence (DUI). *Id.* at 21–22. He stated that he "accepted a deferred sentence" in the criminal matter, the requirements of which included the installation of an interlock device in his car, eight sessions of alcohol awareness counseling, community service, and the payment of fines. *Id.* at 21–22, 24–26.

Investigators obtained information pertaining to the Individual's police record in April 2022, which revealed various criminal charges, including Criminal Damage to Property, Domestic Violence (DV), and Speeding, dating as far back as May 2002. Ex. 12 at 84–93. The Individual had not listed these criminal charges in the April 2022 QNSP. *Id.* The same month, the Individual underwent an Enhanced Subject Interview (ESI) with an investigator, during which he answered questions regarding his police record. *Id.* at 62–66. The Individual was subsequently granted his access authorization. Transcript of Case No. PSH-24-0039 (Tr.) at 101.

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.

In July 2023, the Individual was arrested and charged with Aggravated Battery Against a Household Member Great Bodily Harm (Aggravated Battery), Abuse of a Child Does not Result in Death or Great Bodily Harm (Child Abuse), and Interference with Communication. Ex. 8 at 3. Another person reported the incident to DOE on the Individual's behalf the following day. Ex. 10. The Individual also reported the incident to DOE three days after the incident. Ex. 9 at 2.

The Local Security Office (LSO) began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf, presented the testimony of three other witnesses, and submitted three exhibits, marked Exhibits A through C. The DOE Counsel submitted twelve exhibits marked as Exhibits 1 through 12.

II. Notification Letter

Guideline J states that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” and that, “[b]y its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under Guideline J include “[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). Under Guideline J, the LSO alleged that:

- a) The Individual was arrested and charged with Aggravated Battery, Child Abuse, and Misdemeanor Interference with Communications in July 2023;
- b) The Individual was charged and arrested with DUI and Careless Driving in March 2020;
- c) The Individual was arrested and charged with Battery DV in October 2018;
- d) The Individual was arrested and “charged” with Temporary Restraining Order (TRO) in January 2018;
- e) The Individual was arrested and charged with DV, Criminal Damage to Property, and Unlawful Entry in October 2017;

- f) The Individual was arrested and charged with Aggravated Assault and Negligent Use of Deadly Weapon in February 2016;
- g) The Individual was cited for speeding in January 2016, December 2007, and October 2005;
- h) The Individual was cited with Display of Current Valid Registration Plate and Mandatory Financial Responsibility in April 2010;
- i) The Individual was cited with Mandatory Use of Seatbelts in November 2008;
- j) The Individual was cited with Display of Current Valid Registration Plate, Mandatory Use of Seatbelts, and Speeding in April 2007;
- k) The Individual was cited with Obedience to No-Turn Signs, Overtaking a Vehicle on the Left, and Display of Current Valid Registration Plate in April 2007;
- l) The Individual was cited with When Lighted Lamps are Required in October 2005;
- m) The Individual was cited with Speeding, Mandatory Financial Responsibility, and Tail Lamps in September 2005; and
- n) The Individual was charged with Assault and Battery in May 2002.

Ex. 1 at 1–2. The LSO’s invocation of 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 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).

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

Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

Regarding the March 2020 DUI that he disclosed on his QNSP, the Individual told the investigator during the April 2022 ESI that on the night in question, he stopped at his home after spending time with friends and picked up a bottle of liquor. Ex. 12 at 62; Tr. at 102. He left his home to drive downtown and, according to the investigator's account of the Individual's statement, "had the alcohol drink while he was driving around."² Ex. 12 at 62. As the car he was driving was "powerful," he "squeaked the tires when taking off" down the street, causing law enforcement to take notice and pull him over. *Id.*; Tr. at 102. He was arrested following field sobriety tests and a Breathalyzer test. *Id.* He received a deferred sentence, which required him to complete community service, place an interlock device in his car, attend eight counseling sessions, and pay all applicable fines. *Id.*; Ex. 2 at 25–133. Acting in compliance with the court order, the Individual completed a twelve-hour DUI class in November 2020. Ex. 2 at 20. The Individual also attended three sessions of one-on-one therapy and six sessions of group therapy in a Regular Outpatient Treatment Program (ROP) at a recovery center from October 2020 through February 2021, which was in compliance with the aforementioned order. *Id.* at 21.

In a subsequent October 2022 meeting with an investigator, the Individual was confronted with and asked to specifically discuss the February 2016, October 2017, and October 2018 incidents. Ex. 12 at 64–65. The investigator specifically confronted the Individual with a February 2016 Aggravated Assault and Negligent Use of Deadly Weapon charge, and Battery and DV charges in October 2017 and October 2018. *Id.* at 65. According to the investigator's account, the Individual "confirmed that these incidents did happen . . . but [said] that he was never arrested for anything other than his listed DUI charge." *Id.* at 65. Regarding the February 2016 incident, the Individual indicated that the boyfriend of the woman the Individual was dating at the time came to the Individual's home to confront the Individual, prompting the Individual to use a firearm to "fire[] a round into the ground as a warning shot[.]"³ *Id.* The man, who had remained in his car, left the Individual's property. *Id.* Although law enforcement was called, the Individual denied being arrested or making any court appearances. *Id.* Regarding the October 2017 incident, the Individual told the investigator that although a former girlfriend called law enforcement during an argument, he was not arrested and did not make any court appearances in connection with the incident.⁴ *Id.* He denied assaulting his former girlfriend and indicated that she had destroyed some of his personal property. *Id.* He told the investigator that she "refused to leave [his] residence when [he] threw her belongings into the yard and demanded that she leave." *Id.* He stated that he did not

² The Individual testified that to the best of knowledge, he was not "drinking, like, around town[.]" Tr. at 103.

³ Regarding this incident, the Individual stated in his request for a hearing that the gentleman who came to his home "was being threatening" and was intoxicated. Ex. 2 at 5. He drove "up and down" the Individual's driveway, and to encourage the man to leave the area surrounding his home, the Individual "got [his] firearm and walked to the middle of [his] road and discharged a round towards the dirt road[.]" *Id.*

⁴ In the request for a hearing, the Individual stated that he "[does not] have any supporting information" regarding this incident and he "[does not] have any knowledge" of the incident. Ex. 2 at 5. He denied discussing this incident during the investigation process. *Id.*

disclose the incident in the QNSP because “he was not arrested, and he did not believe he was required to do so.” *Id.* Regarding the October 2018 incident, the Individual stated much the same, in that he was in an argument with a former girlfriend who began “throwing [his] possessions.”⁵ *Id.* The Individual admitted that he “did throw her belongings in [retaliation for her] destruction of his property and unlawful entry.” *Id.* at 65–66. Although his former girlfriend called law enforcement, he claimed he was not arrested, he did not make any court appearances, and he stated that he did not assault his former girlfriend with whom he was arguing. *Id.* at 65–66. The Individual could not explain why the charges appeared on his police record, “as he was not arrested.” *Id.* at 66. The investigator noted that the Individual asserted that now he was “better about de-escalating . . . arguments before [they] get to that point.” *Id.* at 65–66. He also professed his respect for laws and regulations. *Id.* at 65–66. The Individual was also asked about a 2002 Assault and Battery charge. *Id.* at 68. The Individual stated that he “was not aware of any incident in the year 2002 and could not speak to why the date would be appearing as such, believing it to be a typing mistake[.]”⁶ *Id.*

The Individual testified at the hearing that he had been “booked” only twice in his life, and he could not explain why the charges associated with the aforementioned incidents appeared on his record.⁷ *Tr.* at 80. He denied being arrested and charged with Battery, DV, Criminal Damage to Property, or Unlawful Entry in 2017 or 2018. *Id.* at 109–10, 113–15. Regarding the 2018 restraining order, the Individual posited in his testimony that it could be a clerical error. *Id.* at 103–04. In later testimony, he said that he “was never handed, physically handed a restraining order.” *Id.* at 108, 110. When asked why he stated in his request for a hearing that he was not “fully aware of the details” of the aforementioned incidents when he provided details to the investigator, the Individual stated that he was providing a “narrowed . . . down” narrative of their fights. *Id.* at 108–09. In later testimony, he said that he had explained “two situations” that could have transpired with his former girlfriend based on the timeline he was given. *Id.* at 112–13. Regarding the details of the aforementioned incidents, the Individual stated that it was “a rough part of [his] life,” and now, he is able to “communicate well” and “deescalate a situation.” *Id.* at 80–81. He feels that these were skills that he previously lacked. *Id.* at 81.

The police report of the 2023 incident indicates that the Individual’s current girlfriend, the alleged victim, made contact with police dispatch after she “had been engaged in a physical altercation” with the Individual, and dispatch advised police that a man and child could be heard “in the background” before the caller’s phone line disconnected. *Ex.* 8 at 3; *Ex.* 7 at 6. Dispatch also stated that when they called back, “a male answered the phone[,] stating everything was ‘fine.’” *Ex.* 8 at 3; *Ex.* 7 at 6. The police report narrative noted that when law enforcement reported to the scene, a reporting officer observed that the alleged victim’s face was swollen and “covered in dried blood,”

⁵ In his request for a hearing, the Individual stated that he “is not fully aware of the details” and that he “never met with law enforcement on this matter[.]” *Ex.* 2 at 4. The Individual also stated that following this incident, he “committed to . . . [a] ministry for counseling.” *Id.* He did not indicate the type of counseling he sought at the ministry.

⁶ In the request for a hearing, the Individual stated that he was a child in 2002, and that he believes this charge appeared on his police record due to error. *Ex.* 2 at 8; *Tr.* at 115–16.

⁷ In his request for a hearing, the Individual attached a screenshot of a record of two bookings, one from July 2023 and one from March 2020. *Ex.* 2 at 22. In the screenshot, only the height, weight, and last name are available as identifying information. *Id.*

prompting him to call for an ambulance. Ex. 8 at 4; Ex. 7 at 6. The law enforcement officer observed a “small laceration” on the alleged victim’s nose. Ex. 7 at 6. By the time law enforcement responded, the Individual had left the scene. Ex. 8 at 4; Ex. 7 at 6. The alleged victim reported that the Individual began striking her in the face following an argument that took place in the Individual’s car, as the couple was driving back home from an outing. Ex. 8 at 4; Ex. 7 at 6; Tr. at 59. She stated that she was struck in the face at least three times, and that the telephone call with dispatch was interrupted when the Individual was striking her in the face. Ex. 8 at 4; Ex. 7 at 6. Their minor child was in the back seat of the car. Ex. 8 at 4; Ex. 7 at 6. The police report indicates that the reporting law enforcement officer observed “several blood splatters inside the vehicle[,] mainly on the passenger door and center [console].” Ex. 8 at 4; Ex. 7 at 6; Tr. at 59–60.

The police report also indicates that the Individual’s father approached the responding police officers to tell them that the alleged victim “was just drunk and had just simply fallen[.]”⁸ Ex. 8 at 4; Ex. 7 at 6. The Individual’s father called the Individual, allowing an officer to make contact with him. Ex. 8 at 4; Ex. 7 at 6. The Individual told an officer that the alleged victim had confronted him about text messages that he had sent to one of his coworkers, resulting in an argument. Ex. 8 at 4; Ex. 7 at 6. The Individual told the officer that “he became upset . . . and threw his phone at [the alleged victim’s] face[,]” causing her injuries. Ex. 8 at 4; Ex. 7 at 6.

The police report states that when the responding law enforcement officer reported to the hospital to which the alleged victim was taken, he conducted a more detailed interview with the alleged victim. Ex. 8 at 4; Ex. 7 at 7. The alleged victim indicated that the Individual became agitated when the minor child began crying. Ex. 8 at 4; Ex. 7 at 7; Tr. at 70–71. As a result of his agitation, he began striking the alleged victim in the arm, and because the alleged victim did not want the violence to escalate, she called 9-1-1. Ex. 8 at 4; Ex. 7 at 7. The Individual took the phone from the alleged victim and threw it at her face, then proceeded to strike the alleged victim’s face several times. Ex. 8 at 4; Ex. 7 at 7. When the Individual learned that the alleged victim had called law enforcement, “he left [the scene] on foot.” Ex. 8 at 4; Ex. 7 at 7. The Individual was located by law enforcement, arrested, and eventually transported to an adult detention facility. Ex. 8 at 4; Ex. 7 at 7; Ex. 2 at 22. The police report indicated that the law enforcement officer who arrested the Individual observed a “dry blood drop on his hands, right shoulder . . . right temple[,] and right ear.” Ex. 7 at 11. The Individual “also had three miniature shots of vodka in his pockets.” *Id.*

Another person reported the incident to DOE on behalf of the Individual the day after his arrest. Ex. 10. The Individual also reported the incident to DOE three days later, stating in the incident report that on the day in question, the couple and their child went on an outing, and as they were returning home, the alleged victim asked the Individual about a text message that he received. Ex. 9 at 2; Tr. at 69–71. The alleged victim accused him of “cheating and talking to women at work.” Ex. 9 at 2; Tr. at 69–71. The alleged victim asked him for his phone, so he “pushed it in her direction and it accidentally hit her in the nose and started to bleed[.]” Ex. 9 at 2. He also stated that the alleged victim began “hitting [him].” *Id.* The Individual stated that they began arguing outside of the car, and although he begged the alleged victim not to call law enforcement, she did. *Id.* The Individual “walked off to get away and clear [his] emotions.” Ex. 9 at 2; Tr. at 71–72.

⁸ The alleged victim testified that she consumed one beer on their outing. Tr. at 60. In later testimony, the Individual admitted to consuming a beer, as well, but denied it being an issue on the day of the incident. *Id.* at 100–01.

However, he returned when he was contacted by law enforcement, and was subsequently arrested. Ex. 9 at 2; Tr. at 71–72.

During his testimony, the Individual confirmed what he stated in his incident report to DOE, but further provided that he “tossed” his phone to the passenger side, where the alleged victim was sitting, and she was struck in the nose when she turned her face. Tr. at 71, 98–99; Ex. C, Attachment 1 at 1. He testified that he did not tell her that he was tossing the phone to her and that he immediately attempted “to render aid” as it was an accident, at which point, the alleged victim began “hitting [him]” and “yelling at [him.]” Tr. at 71, 100; Ex. C, Attachment 1 at 1. He also stated that he had called his manager after he met with law enforcement prior to his arrest, and that he returned his “Q badge” the following Tuesday. Tr. at 72; Ex. C, Attachment 1 at 1. The Individual also stated that he did not contact the alleged victim for a month after the incident, and that she contacted his attorney “to see how she could get the case dismissed.” Tr. at 72; Ex. C, Attachment 1 at 1. He testified that the alleged victim “was not truthful” with law enforcement. Tr. at 72. He described the matter as “an isolated incident.” Tr. at 78; Ex. C, Attachment 1 at 2.

The alleged victim in the July 2023 incident testified that she has known the Individual for approximately five years, and that they have lived together “on and off[.]”⁹ Tr. at 46–47, 55–56. She described the 2023 incident as “a huge misunderstanding.” *Id.* at 47. She testified that they were coming back from an outing when the Individual received a text message from a woman, and they “[did not] have any trust . . . in the relationship and [they did not] know how to communicate.” *Id.* at 47–48. She became angry when the Individual would not discuss the text with her, and when they got home, she asked to see his cell phone. *Id.* at 48. After arguing over the matter, the Individual “threw” his cell phone at her, and he unintentionally struck her in the face, causing “an open wound” on her nose. *Id.* at 48, 56. Because the laceration would not stop bleeding, she “called for an ambulance” and “the cops came[,] and it was just a big mess.” *Id.* at 48, 56. In later testimony, she indicated that she called 9-1-1 because she “[did not] want to drive [herself] to the hospital” and that she told dispatch that “there was an argument, [they] were fighting, and . . . that [her nose] got hit with the phone.”¹⁰ *Id.* at 56–57. She testified that when law enforcement responded, she “said some things that . . . [were not true]” and after the incident, they separated “for about a month[.]”¹¹ *Id.* at 48–49, 58. She stated that the Individual struck her unintentionally, and that “he was just giving it to [her] for [her] to look through his phone to show [her] that he [was not] doing any[thing] wrong.” *Id.* at 58–59. The alleged victim also stated that they have both since improved their lives and that they are on a waiting list for couples counseling. *Id.* at 49. She indicated that she has seen changes in the Individual, that he is “there for [her,]” and that they are working on communicating. *Id.* at 49–50, 52. The alleged victim indicated that the Individual “[does not] disobey the law[,]” and that they “[have not] really had any disagreements, just, like, the main one was from the incident in July [2023].” *Id.* at 51–52. In later testimony, she indicated

⁹ She also testified that she is currently a “stay at home mom” as the couple does not have anyone to “watch [their] youngest son.” Tr. at 62, 118. The Individual remains the sole provider of the family. *Id.* at 62, 118.

¹⁰ The alleged victim was taken to a hospital where she received four stitches. Tr. at 58.

¹¹ She also stated that she had told law enforcement that “he had pushed me on my arm, but that [was not] true.” Tr. at 59. She clarified that they were “arguing and stuff[,]” and as she attempted to get the cell phone, they “were just pushing off against each other, and so it [was not] an intentional hit on [her] arm.” *Id.* at 59.

that on a separate occasion, her adult cousin called law enforcement when the alleged victim and the Individual began arguing. *Id.* at 61–62.

Regarding the 2023 incident, the record indicates that the alleged victim submitted an Affidavit of Non-Prosecution in the criminal matter in July 2023. Ex. 2 at 11. The criminal matter was subsequently dismissed without prejudice in August 2023. Ex. 2 at 12; Ex. 7 at 12. In his request for a hearing, the Individual indicated that the alleged victim had “fabricated” the events she recounted to law enforcement, and that he “truly tried [his] best to deescalate the situation.” Ex. 2 at 2. The alleged victim testified that she was contacted by the prosecutor in the criminal matter, and when asked whether she “wanted to press charges[.]” she said, “no.” Tr. at 53.

The Individual testified that following the July 2023 incident, he “made the decision to ask for help.” Tr. at 77; Ex. C, Attachment 1 at 2. In September 2023, he completed a six-week alcohol awareness program that is conducted by his employer’s Employee Assistance Program (EAP).¹² Ex. 2 at 2, 14–15; Tr. at 88, 90–91. The Individual testified that he has remained abstinent from alcohol for approximately eight months. Tr. at 90. In October 2023, the Individual began attending counseling sessions for anger management, attending for a total of nine sessions. Ex. 2 at 2, 16; Tr. at 88–89, 105–06. The Individual’s therapist stated in a December 2023 letter that the Individual attended eight counseling sessions, that the Individual “has skills now for controlling his anger and has not had any more trouble with that[.]” and that she does not believe that “any more counseling is required at this time.” Ex. 2 at 16. The Individual testified that the therapy he has received has “helped [him] become a better father, create a better relationship, and know when and how to make the best adult decision.” Tr. at 78; Ex. C, Attachment 1 at 2. He also has a child who he does not want to disappoint by exhibiting poor behavior, and accordingly, he wants to be a better person. Tr. at 84, 86–87. He stated that he “want[s] to change,” that he has changed, and that he will “continue to change.” *Id.* at 86.

The Individual submitted evidence pertaining to his performance reviews, which indicated he received a rating of Exceeds Expectations in 2022 and 2023. Ex. A. The Individual submitted a February 2024 letter indicating that he had completed his employer’s Occupational Medicine (OM) Fitness for Duty program, and that OM does “not currently have any concerns regarding [the Individual’s] ability to perform work in a safe and reliable manner.” *Id.*

Regarding the various traffic-related citations, the Individual stated in his request for a hearing that “[a]ny citation was paid in full[.]” Ex. 2 at 6–7. He completed a driver improvement/defensive driving course in October 2023. Ex. 2 at 17; Tr. at 94. The alleged victim in the July 2023 incident stated that when it comes to operating a vehicle, the Individual “completely . . . follows the rules, like completely when on the road.” Tr. at 54. The Individual testified that he last had a traffic-related charge in 2016, and that there were issues with his car that caused those traffic citations. *Id.* at 92. He also stated that his cars have always been insured and registered, it was just a matter of placing the registration in his vehicle. *Id.* at 92–93. He intends to follow the law and has never “put anybody in an unsafe position, driving atrociously, driving irate[.]” *Id.* at 93.

¹² In a December 2023 letter, the EAP counselor indicated that the Individual attended six group classes and three one-on-one sessions. Ex. 2 at 15.

A coworker in the Individual's chain of command, who also sees the Individual on a day-to-day basis and infrequently socializes with the Individual outside of work, indicated that he believes the Individual "made a mistake" on the day of the 2023 incident, and that he has taken "the correct steps and actions to mitigate [the] concern of his criminal conduct."¹³ Tr. at 13–15, 18–19. Accordingly, despite the Individual's criminal record, he believes that the Individual can comply with rules, laws, and regulations. *Id.* at 16–18. He denied any violent situations at the workplace that involved the Individual. *Id.* at 19.

Another coworker, who described himself as a close friend of the Individual, testified that the Individual "always . . . abides by any policies and procedures" at work and that he has "grown exponentially" since the 2023 incident. *Id.* at 24–28. He testified that the Individual "seemed to be involved . . . with crowds that . . . attract attention[.]" but he now understands that "he needs to withdraw himself from that situation." *Id.* at 27–28, 31–32. In later testimony, the witness testified that he meant that the Individual "was just in the wrong crowd." *Id.* at 31. This coworker never observed any violent interactions or arguments involving the Individual at the workplace. *Id.* at 29. He described the Individual as "a better man," "a better father," and "a better coworker" since undergoing counseling and abstaining from alcohol. *Id.* Regarding the July 2023 incident, the coworker testified that the Individual told him "there was an altercation between himself and his girlfriend," that their son was present, and that his girlfriend called law enforcement. *Id.* at 30–31. He went on to clarify that the Individual told him it "was a physical altercation." *Id.* at 31.

A third coworker who has known the Individual for approximately eighteen years, also testified that the Individual told him of the "altercation with his girlfriend[.]" but had no further information regarding the matter. *Id.* at 36–38. In later testimony, the witness clarified that the Individual told him that it was a "verbal altercation" that "escalated." *Id.* at 42. He said that the Individual "does follow rules[.]" and that since seeking counseling and such, the Individual is "more calm" and has a "better attitude toward things[.]" *Id.* at 38–41. He has never seen the Individual become violent. *Id.* at 39.

V. Analysis

The Adjudicative Guidelines provide that conditions that can 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

¹³ The Individual called this coworker during the 2023 incident, and the coworker reported the incident to DOE on behalf of the Individual. Tr. at 20–21. According to the coworker, the Individual told him "that there was a domestic situation," and that "there was a disagreement in the household." *Id.* at 21.

- (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).

While the record is clear that the Individual has a history of traffic-related citations dating as far back as 2004, I believe he has mitigated the stated concerns as they relate to these allegations, which were described in paragraphs (g) through (m) of the SSC. His last citation was in 2016. As such, sufficient time has elapsed since the behavior happened such that I find it unlikely to recur. Adjudicative Guidelines at ¶ 32(a).

Regarding the Individual’s 2020 charge for DUI and Careless Driving, described in paragraph (b) of the SSC, I find the concerns associated with this charge to be mitigated as well. Based on the record before me, the Individual complied with the requirements of his deferred sentence, he underwent counseling via an ROP for his alcohol consumption, and his record is bereft of any further allegations of DUI or alcohol-related criminal charges. Further, the record indicates that the Individual has completed an alcohol awareness and education course through his employer’s EAP. Accordingly, I believe he has mitigated the concern pertaining to the 2020 DUI, as the record contains evidence of successful rehabilitation. *Id.* at ¶ 32(d).

However, I cannot conclude that the Individual has mitigated the stated concerns as they relate to the DV-related charges, described in paragraphs (a) and (c)–(f) of the SSC. Although the Individual denied being arrested and charged with violent crimes following the alleged 2002, 2016, 2017, and 2018 incidents, the investigator’s notes indicate that he admitted to acts that evidence very poor judgment, including the purposeful firing of a weapon, and throwing his former girlfriend’s personal property out “into the yard” during an argument. Ex. 12 at 65. In 2022, the Individual assured the investigator that he had become “better about de-escalat[ing]” arguments. Ex. 12 at 65–66. The Individual also stated in his request for a hearing that following an incident with a former girlfriend, he “committed to [a] ministry for counseling.” Ex. 2 at 4. Despite all this, in 2023, he found himself in an argument that resulted in injury to his current girlfriend and his arrest. While the Individual denied any intention of harming his girlfriend during the 2023 incident, he did admit to “tossing” his cell phone in her direction as they both sat in the enclosed cab of a car, causing a laceration to her nose. As per the police narrative, the injuries that the Individual’s girlfriend sustained also resulted in swelling and dried blood about her face, requiring four stitches. The reporting officer’s narrative noted blood splatter in the car and on the Individual’s person. The severity of the scene described in the police officer’s narrative causes me to gravely doubt the assertion that the Individual had no intention of causing his girlfriend any harm. It should also be noted that one of the Individual’s witnesses testified that the Individual told him that the argument “was a physical altercation.” Tr. at 31. At the very least, his behavior evidences a very serious and highly concerning lack of judgment and a callous disregard for his girlfriend’s physical well-being and the safety of the minor child with them.

Additionally, I do not find the Individual or the alleged victim to be credible witnesses. As stated above, the severity of the description of the scene provided in the police report seems inconsistent

with a simple tossing of a cell phone, as the Individual claims it was. Additionally, the alleged victim's initial statement to law enforcement, as contained in the police narrative, indicated that the Individual had struck her "in the arm" and the face several times. Ex. 7 at 6. This is a materially different account than what was provided at the hearing by either the Individual or the alleged victim. Further, the alleged victim first testified that the text message the Individual received the day of the July 2023 incident caused an argument *due to past issues in their relationship*, but then she testified that they "[have not] really had any disagreement" outside of the July 2023 incident. *Id.* at 47–48, 52–53. She also mentioned an entirely separate incident where her adult cousin called law enforcement when she engaged the Individual in an argument. These statements are inconsistent on their face. Further, she is financially dependent on the Individual, giving her an obvious reason to be less than forthcoming at the hearing.

Although I have before me evidence that the Individual received anger management counseling, and that he enjoyed good performance reviews at work in 2022 and 2023, it is premature to conclude that the Individual has been rehabilitated. As an initial matter, I am skeptical that nine weeks of one-on-one therapy is sufficient to address a pattern of volatile behavior that spanned years. I understand that he has sought assistance through EAP and a counselor. The SSC did not contain any allegations of problematic alcohol consumption in association with the violent criminal conduct, so while the Individual's participation in EAP may result in some personal benefit to him, classes pertaining to alcohol consumption do not address the underlying behavior. Further, based on his own statements, he sought counseling at a ministry following an argument with his former girlfriend that resulted in the destruction of property, and yet, he subsequently found himself in another argument that actually resulted in observable injury to the alleged victim. During the ESI, he assured the investigator of his newfound ability to deescalate arguments, only to subsequently become involved in an argument that resulted in his arrest and four stitches for the alleged victim. Lastly, I have no evidence before me indicating that the Individual has sought higher education or that he is engaged in positive community involvement. I cannot conclude that the Individual has mitigated the concerns regarding the Individual's violent criminal behavior pursuant to mitigating factor (d). Adjudicative Guidelines at ¶ 32(d).

Despite the Individual's assertions that he had only been arrested twice, and that he did not commit a criminal act on the day of the 2023 incident, the record clearly evidences a history of violence-related criminal charges dating as far back as 2016.¹⁴ For the reasons previously stated and for the reason that the Individual's primary corroborating evidence was the testimony of an unreliable witness, I cannot conclude that the Individual has shown that there is no reliable evidence to support that the individual committed the offenses pursuant to mitigating factor (c). *Id.* at ¶ 32(c).

As the 2023 incident took place less than a year ago, I cannot conclude that enough time has passed, and because the Individual has a history of engaging in arguments where he exhibits poor judgment and explosive behavior, I cannot conclude that the criminal behavior took place under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's

¹⁴ As the Individual was a minor in 2002, I have not considered the criminal charge described in paragraph (n) of the SSC as part of the Individual's concerning criminal behavior. See 10 C.F.R. § 710.7(c) (requiring me to consider, among other factors, "the age and maturity of the individual at the time of the conduct").

reliability, trustworthiness, or good judgment. Therefore, he has not mitigated the stated concerns pursuant to mitigating factor (a). *Id.* at ¶ 32(a).

I have no information before me indicating that the Individual was pressured or coerced into committing the alleged offenses, and accordingly, the mitigating factor at (b) is not applicable. *Id.* at ¶ 32(b).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals