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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: July 25, 2024)	Case No.: PSH-24-0159
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Issued: October 8, 2024

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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

In 2009, the Individual was granted access authorization, which he has held continuously since that time, in connection with his employment at a DOE site. Hearing Transcript, OHA Case No. PSH-24-0159 (Tr.) at 42. In a 2016 Questionnaire for National Security Positions (QNSP), the Individual disclosed that he had been arrested for underage possession of alcohol in 2005. Exhibit (Ex.) 20 at 68–69.² A background investigation revealed that the Individual was convicted on a charge of reckless driving in April 2009. Ex. 21 at 71. In 2018, the Individual was cited for speeding in a work zone. Ex. 22 at 72.

On January 11, 2024, the Individual submitted a Personnel Security Information Report (PSIR) to the local security office (LSO) in which he disclosed that he had been arrested and charged with

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

² The local security office submitted a PDF exhibit notebook containing each of the exhibits. The exhibits contain a variety of non-consecutive page markings relating to documents from which the exhibits were excerpted. This Decision will refer to the pages in the order in which they appear in the exhibit notebook regardless of their internal pagination.

Assault on a Family Member on January 8, 2024. Ex. 4 at 12. Through letters of interrogatory issued to the Individual on January 17, 2024 (First LOI), and January 19, 2024 (Second LOI), the LSO learned that the Individual consumed alcohol to the point of self-described intoxication at least once every two weeks and that his arrest for Assault on a Family Member occurred as a result of a dispute with his wife after they had both consumed alcohol. Ex. 8; Ex. 9; Ex. 10; Ex. 12. The Individual also disclosed that the dispute with his wife concerned his having engaged in an extra-marital affair. Ex. 9 at 24.

The LSO received the results of a continuous evaluation system report on March 8, 2024, related to the Individual's criminal record. Ex. 19 at 63–64. The records indicated that the Individual had committed a speeding offense in 2008, reckless driving offense in May 2009, and failure to obey a stop sign offense in 2011. *Id.* at 64–67.

On March 15, 2024, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 16 at 41. The DOE Psychologist's report of the evaluation (Report) indicated that the Individual represented that the dispute with his wife prior to his arrest for Assault on a Family Member concerned financial matters. *Id.* at 42. The Individual also reported consuming six or more alcoholic drinks in a sitting on an at least monthly basis. *Id.* at 43. At the request of the DOE Psychologist, the Individual provided samples for Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth)³ testing, the results of which were positive at 7,575 ng/mL and 217 ng/mL, respectively. *Id.* at 50. The DOE Psychologist subsequently issued the Report in which he opined that the Individual habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 45–46.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E, G, and J of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted twenty-two exhibits (Ex. 1–22). The Individual submitted five exhibits (Ex. A–E). The Individual testified on his own behalf and offered the testimony of a character witness. Tr. at 3, 9–10, 21. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 49.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as one basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at 7–9.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability,

³ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol within several weeks of sample collection. Ex. 18 at 57–58.

trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC cited the Individual's admission to having engaged in an extra-marital affair, alleged representation to the DOE Psychologist that the dispute with his wife that led to his arrest for Assault on a Family Member concerned financial matters rather than his extra-marital affair, and his history of traffic infractions.⁴ Ex. 2 at 7–9. The LSO's allegations that the Individual deliberately provided false or misleading information to a mental health professional involved in making a recommendation relevant to his eligibility for access authorization, demonstrated a pattern of rule violations, and engaged in personal conduct that creates a vulnerability to exploitation, manipulation, or duress, justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b), (d)(3)–(e).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as an additional basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at 4–5. "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. The SSC alleged that the Individual habitually or binge consumed alcohol to the point of impaired judgment and cited the Individual's Underage Possession of Alcohol and Assault on a Family Member charges. Ex. 2 at 4–5. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work and habitually or binge consumed alcohol to the point of impaired judgment justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at 6–7. "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. The SSC cited the Individual's charges with Assault on a Family Member, speeding in a work zone, reckless driving, and Underage Possession of Alcohol. Ex. 2 at 6–7. The LSO's allegations that the Individual engaged in numerous instances of unlawful conduct justify its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and

⁴ The LSO additionally listed as security concerns under Guideline E the Individual having been charged with Assault on a Family Member in 2024, speeding in a work zone in 2018, reckless driving on two occasions in 2009, and Underage Possession of Alcohol in 2005. Ex. 2 at 7–8. The LSO also cited these offenses as security concerns under Guideline J. *Id.* at 6. Under the Adjudicative Guidelines, this conduct cannot be alleged under Guideline E if it was alleged as presenting security concerns under another guideline. Adjudicative Guidelines at ¶ 16(c)–(d). Accordingly, the LSO improperly raised these offenses under Guideline E, and I will consider them exclusively under Guideline J.

security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 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 2005, at which time he was a minor, the Individual was arrested and charged with Underage Possession of Alcohol. Ex. 20 at 69. In 2008, the Individual received a traffic citation and paid a small fine for following another vehicle too closely. Ex. 19 at 67. The Individual was charged with reckless driving in April 2009 and May 2009. *Id.* at 64, 66. The Individual paid fines and fees to resolve both charges. *Id.* In 2011, the Individual was cited for failing to obey a traffic sign and paid fines and fees in connection with the citation. *Id.* at 64. In 2018, the Individual was cited for speeding sixteen miles per hour in excess of the posted speed limit in a work zone. *Id.* at 67.

Beginning in approximately 2011, the Individual consumed alcohol three to four times weekly. Ex. 12 at 29 (reflecting the Individual’s responses to alcohol-related questions on the Second LOI). The Individual usually consumed two to four beers per sitting but consumed six to eight beers to the point of self-described intoxication two to four times monthly. *Id.*; *see also* Tr. at 29 (testifying at the hearing that he believed that those estimates were accurate).

On December 27, 2023, the Individual met a woman he had known for several years at a hotel to engage in extra-marital sexual intercourse. Ex. 11 at 28; Ex. 16 at 42–43. The woman’s boyfriend, who was electronically tracking her whereabouts, contacted the Individual’s wife and the two of them attempted to confront the Individual and the woman at the hotel. Ex. 16 at 42–43. However, the Individual observed his wife and the woman’s boyfriend and remained in the hotel room until after his wife and the woman’s boyfriend departed to avoid a confrontation. *Id.* at 43.

The Individual was arrested on January 8, 2024, for Assault on a Family Member. Ex. 4 at 12; Ex. 5 at 15–16. The Individual and his wife were outside of their home discussing their marriage and his extra-marital affair when, according to the Individual, she slapped him. Ex. 4 at 12; Ex. 7 at 19; Ex. 9 at 24. The Individual then pushed his wife to the ground and, when she “came back at [him]” he pushed her to the ground for a second time. Ex. 9 at 24; *see also* Tr. at 28 (testifying at the hearing that he was “keeping her away” and did not intend to push her to the ground). According to the Individual, his wife threw an object at him, and he went into the house to gather

things to leave. Ex. 9 at 24. The Individual's wife summoned law enforcement, and he was arrested before he could leave the home. *Id.* The law enforcement officers who arrested the Individual reviewed footage from a doorbell camera which did not corroborate the Individual's claim that his wife struck him. Ex. 4 at 13. According to the Individual, he and his wife each consumed three twelve-ounce beers before the altercation. Ex. 9 at 24; Ex. 11 at 28.

Following the Individual's arrest, he and his wife entered marital counseling. Ex. C (containing a letter from the counselor providing marital counseling to the Individual and his wife). The Individual and his wife participated in approximately weekly marital counseling from January 23, 2024, through March 12, 2024. *Id.* Thereafter, the Individual's and his wife's attendance was sporadic; they attended only three additional counseling sessions between March 12, 2024, and the date of the hearing. *Id.* In a letter dated August 28, 2024, the counselor indicated that the Individual and his wife had made "strides in conflict resolution and emotional regulation . . . [and n]otably, there have been no emotional outbursts." *Id.*; *see also* Tr. at 46 (reflecting testimony from the Individual that he and his wife are still enrolled in marital counseling but that the frequency of their sessions had decreased as they "learned to work through things better and come together more as a couple"). The marital counseling did not address alcohol or how alcohol might have affected the Individual's and his wife's relationship. Tr. at 47.

The Individual met with the DOE Psychologist on March 15, 2024, for a psychological evaluation. Ex. 16 at 41. During the clinical interview portion of the evaluation, the Individual cited financial matters as one basis for the argument with his wife which precipitated his arrest for Assault on a Family Member. *Id.* at 42; *see also* Tr. at 25–26, 41 (reflecting the Individual's testimony at the hearing that the argument concerned numerous issues and that he tried to communicate that but "just worded it wrong when reporting it [to the DOE Psychologist]"); Tr. at 65–66 (containing the DOE Psychologist's testimony at the hearing that the Individual discussed his marital infidelity during the clinical interview and that the DOE Psychologist perceived the causes of the dispute as "intertwined" and "all mashed up together"). Regarding his alcohol consumption, the Individual reported drinking alcohol at least four nights weekly and consuming six or more drinks in a sitting at least monthly. Ex. 16 at 43.

In his Report, the DOE Psychologist opined that the Individual habitually or binge consumed alcohol to the point of impaired judgment.⁵ *Id.* at 45–46. He recommended that the Individual demonstrate rehabilitation or reformation by participating in twelve weeks of outpatient substance use counseling and twelve weeks of Alcoholics Anonymous (AA) meetings. *Id.* at 46.

In April 2024, a judge issued an order finding sufficient facts to find the Individual guilty of Assault on a Family Member but deferring adjudication for two years. Ex. 13 at 34. Pursuant to the order, the Individual was required to pay fees and attend an anger management class. *Id.* at 31, 34. On July 29, 2024, the Individual completed the required anger management class. Ex. E. At the hearing, the Individual testified that he had also paid court-ordered fines and fees and that the

⁵ The DOE Psychologist cited a Centers for Disease Control definition of binge drinking as monthly consumption of five or more drinks in a single occasion to the point of intoxication for men. Ex. 16 at 48. For habitual consumption of alcohol to the point of impaired judgment, he inferred that "[b]ecoming intoxicated twice a month seems to anchor the central tendency of this definition" under OHA cases interpreting the term. *Id.* at 49.

charges were eligible to be “wiped” from his record in 2026 if he did not commit any other offenses. Tr. at 44.

The Individual testified at the hearing that his alcohol consumption “slowed down” following the psychological evaluation with the DOE Psychologist and that, as of the date of the hearing, he consumed twelve to sixteen beers weekly. *Id.* at 31–32. The Individual denied that he was “dependent” on alcohol and indicated that he did not believe that he needed to pursue alcohol-related counseling or attend AA as recommended by the DOE Psychologist because he had “quit [drinking alcohol] in the past” without help. *Id.* at 32–33.

The Individual’s supervisor testified at the hearing that she had known the Individual for fifteen years as a friend and colleague. *Id.* at 11. She has never observed any behavior on the part of the Individual that caused her to doubt his honesty, trustworthiness, or reliability. *Id.* at 12. The Individual’s supervisor testified that she had observed the Individual consume alcohol socially, including sometimes to the point of what she perceived might have been intoxication. *Id.* at 14–16. However, she testified that the Individual was a diligent, reliable worker and that she had never had reason to believe that alcohol affected him in the workplace. *Id.* at 18–19.

The DOE Psychologist testified that the Individual had not demonstrated rehabilitation or reformation because he had not followed the DOE Psychologist’s recommendations and denied that he had an alcohol-related problem. *Id.* at 63–64. The DOE Psychologist indicated that the “first step” for the Individual would be to “just acknowledge[e] there’s a problem” with alcohol as he had acknowledged problems in his marriage when he decided to pursue marital counseling. *Id.*

V. ANALYSIS

A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances,

or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

Regarding the Individual's alleged failure to disclose the role of his extra-marital affair in his January 8, 2024, altercation with his wife, both the Individual and the DOE Psychologist testified at the hearing that the Individual's account of the causes for the dispute was intertwined with his account of the infidelity. *Supra* p. 5. Moreover, the Individual was forthcoming about his marital infidelity in response to the LOIs and in the clinical interview with the DOE Psychologist. *Supra* pp. 2, 5. For these reasons, I find that the LSO's allegation that the Individual provided false or misleading information to the DOE Psychologist regarding the reason for the altercation with his wife was erroneous and that the Individual's statements to the DOE Psychologist do not present security concerns.

The Individual and his wife pursued marital counseling following his extra-marital affair, and the marital counselor opined that the Individual and his wife had made positive progress. Moreover, the Individual's wife is fully aware of his conduct and the Individual was forthcoming with the LSO about his infidelity. In light of the Individual's positive actions to resolve this issue through counseling, and the improbability of the Individual being exploited or manipulated by the threat of revealing his marital infidelity given that it is known to his wife and the LSO, I find that the fourth and fifth mitigating conditions are applicable to the Individual's extra-marital affair. Adjudicative Guidelines at ¶ 17(d)–(e).

Turning to the Individual's alleged rule violations, after omitting those offenses improperly alleged by the LSO under both Guideline E and Guideline J, the only remaining offenses are two traffic violations that occurred in 2011 and 2008. *Supra* note 4. As the offenses occurred at least thirteen years ago, and each of them was a relatively minor traffic offense, I find that the offenses are mitigated under the third mitigating condition. Adjudicative Guidelines at ¶ 17(c).

For the aforementioned reasons, I find that the Individual has resolved each of the security concerns properly alleged by the LSO under Guideline E.

B. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

The Individual's alcohol misuse was neither infrequent nor happened under unusual circumstances; rather, by his own admission, he consumed alcohol to intoxication on an at least monthly basis for approximately thirteen years. The Individual asserted at the hearing that he had recently reduced his alcohol consumption slightly, but he provided no corroborating evidence to support this claim. Even had he done so, a brief, slight reduction in his alcohol consumption would not be sufficient to resolve the security concerns presented by his frequent intoxication over such a lengthy period. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

In his hearing testimony, the Individual denied that his alcohol use was problematic. Moreover, as noted above, he failed to produce any evidence to corroborate that he has modified his alcohol consumption practices. For these reasons, the second mitigating condition is inapplicable. *Id.* at ¶ 23(b). As the Individual has not pursued any alcohol-related treatment, the third and fourth mitigating conditions are likewise inapplicable. *Id.* at ¶ 23(c)–(d).

For the aforementioned reasons, I find that the Individual has not resolved the security concerns alleged by the LSO under Guideline G.

C. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Id. at ¶ 32.

While some of the unlawful conduct cited by the LSO occurred over fifteen years ago, at which time the Individual's youth and immaturity likely contributed to his imprudent decisions, the Individual's speeding in a work zone offense in 2018 and Assault on a Family Member offense in 2024 occurred more recently when he was a mature adult who had possessed access authorization for a lengthy period of time. In light of the recurrence of unlawful conduct casting doubt on the Individual's judgment and reliability, even after lengthy periods without being cited for criminal offenses, I find that the Individual's conduct did not occur under unique circumstances and that the passage of time alone is inadequate to establish the applicability of the first mitigating condition. *Id.* at ¶ 32(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual did not assert that he was pressured or coerced into committing any unlawful conduct. *Id.* at ¶ 32(b). The Individual represented that he acted in self-defense when his wife struck him and did not intend to push her to the ground during the altercation that led to his arrest for Assault on a Family Member. In light of the April 2024 judicial order stating that there were sufficient facts to find the Individual guilty of Assault on a Family Member, there is ample basis to conclude that the Individual committed the offense. The Individual does not dispute that he committed any of the other offenses cited by the LSO. Thus, the third mitigating condition is inapplicable. *Id.* at ¶ 32(c).

Less than one year has passed since the Individual's most recent unlawful conduct. While the Individual has provided evidence that he is complying with the court order deferring adjudication of his Assault on a Family Member offense, he will be subject to that order until April 2026 and it is too early to conclude that he will refrain from committing additional offenses until that time. The testimony of the Individual's supervisor provides some evidence that he has a good employment record, but his positive workplace conduct predated his recent criminal conduct and therefore cannot establish a sufficient change in the Individual's life to show rehabilitation. In light of the passage of a relatively short amount of time since the Individual's most recent offense, and his failure to bring forward evidence of rehabilitation, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 32(d).

For the aforementioned reasons, I find that the Individual has not resolved the security concerns alleged by the LSO under Guideline J.

VI. CONCLUSION

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

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals