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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:	September 5, 2024 )	Case No.: PSH-24-0189
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Issued: March 3, 2025

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**Administrative Judge Decision**

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Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 or Eligibility to Hold a Sensitive Position."<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 access authorization should not be granted.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In September 2023, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 7.<sup>2</sup> In the QNSP, the Individual reported that in approximately 1998, he was cited and convicted of misdemeanor possession of marijuana. Ex. 7 at 94. He also reported that in August 2004, he was convicted of Felony Aggravated Assault, for which he was incarcerated for four years from approximately September 2005 to September 2009. *Id.* at 95. The Individual further reported in his QNSP that in July 2017, he was charged with "burglary/breaking and entering" but he stated that all charges were dropped because the relevant witness did not appear in court. *Id.* at 92–93. He also reported that an Order of Protection was issued against him in August 2019. *Id.* at 102. Criminal history records obtained by the Office of Personnel

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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.

<sup>2</sup> The exhibits submitted by the DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

Management (OPM) as part of its background investigation of the Individual stated he was arrested for Nonviolent Family Offense on August 20, 2019. Ex. 8 at 194. The OPM background investigation revealed additional details of the aforementioned incidents and uncovered additional charges including a July 2001 arrest and charge for possession of a scheduled drug and driving on a suspended license. *Id.* at 187, 219. The OPM investigation also obtained court information reflecting that the Individual had four contempt charges in October 2005. *Id.* at 220–21. The OPM report also contained a criminal history record that stated on July 11, 2022, the Individual was arrested for “Trespass Warning.” *Id.* at 194. However, OPM also obtained a copy of the police incident report which did not state that an arrest was made. *Id.* at 196. Instead, the police incident report stated that the neighbor was “trespassed from the [Individual’s address]” and the Individual and his wife “were trespassed from the [the neighbor’s address].” *Id.* The incident report further stated that “both parties were explain[ed] [their options] and informed of trespassed warnings.” *Id.* The incident report also stated, “[t]his report is for documentation purposes only.” *Id.* at 194, 196.

Subsequently, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory in March 2024 (first LOI) and a second LOI in May 2024 (second LOI), concerning his alleged criminal conduct. Ex. 5; Ex. 6. Regarding his November 1999 citation, the Individual stated that he was cited for marijuana possession while he was at his friend’s house when neighbors called the police because his friend and the friend’s girlfriend were arguing.<sup>3</sup> Ex. 5 at 29. He stated that when the police saw marijuana on the coffee table, his friend denied ownership of the drug, and when the police asked the Individual if the drug belonged to him, he said “yes” even though it did not belong to him because he wanted his friend and the girlfriend to regain custody of their child. *Id.* The Individual stated that he attended a court date on November 24, 1999, pleaded guilty, was sentenced to six months’ probation, and paid a \$250 fine. *Id.* He submitted a copy of his court disposition record with his second LOI which was consistent with his LOI statements. *Id.* at 30–31.

Regarding his July 2001 charges for drug possession and driving with a suspended license, the Individual stated in his second LOI that police stopped him while he was driving in a car with his friend. *Id.* at 32. He stated he had borrowed a car from a gentleman, but the gentleman subsequently reported a “carjacking” (theft) of his car. *Id.* Police brought the gentleman to the scene and the gentleman informed them that neither the Individual nor the friend were the people who carjacked him. *Id.* However, police found a small amount of marijuana in the Individual’s pocket and also discovered he was driving with a suspended driver’s license, so they arrested him. *Id.* The Individual submitted a copy of a police incident report with his second LOI which was consistent with his explanation of the incident. Ex. 5 at 33; *see* Ex. 8 at 187 (law enforcement record reflecting arrest and citation on July 5, 2001, for drug possession and driving with suspended driver’s license). The Individual stated in his second LOI that his sentence was for six months’ probation, payment of \$250 in fines, and required drug tests which he passed successfully. Ex. 5 at 32.

In his first LOI, the Individual provided details regarding his August 2004 arrest and charge for Felony Aggravated Assault. Ex. 6 at 41–42, 49. He stated the only thing he could remember about the incident is that he argued with his fiancée, who was his daughter’s mother, because she had

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<sup>3</sup> In his QNSP, the Individual estimated the date of the offense was 1998, but OPM records reflect the date of offense was November 16, 1999, and in his second LOI, the Individual stated that the date in the OPM records was correct. Ex. 5 at 29; Ex. 7 at 94; Ex. 8 at 189.

come home late. *Id.* at 49. He stated that he knew that she was lying and was “fed up” because it had been going on for “some time.” *Id.* The Individual explained, “I just lost it and cut her with a shaving razor.” *Id.* He stated when he went to the bathroom, his fiancée called the police and that is “honestly all [he] remember[s] of the incident . . .” *Id.* Law enforcement records, including the affidavit of complaint, obtained during the OPM investigation reflected that on the date of the incident on August 8, 2004, the Individual and the victim argued when he accused her of having an affair because she arrived home late from work. Ex. 8 at 201. She stated he “pulled a shotgun out and threatened her with it, placing her in fear,” and he held her down and intentionally cut her with a shaving razor multiple times, after which he poured alcohol on her wounds. *Id.* at 201–02. Law enforcement records stated that the Individual pleaded guilty, and on October 3, 2005, he received a six-year prison sentence. *Id.* at 203. Regarding his imprisonment, the Individual stated in his second LOI that he did not receive any additional charges or write ups while incarcerated. Ex. 5 at 34. He stated he was sentenced to six years and was released from prison in four years for good behavior. *Id.*

Regarding his July 2017 arrest involving domestic assault, the Individual stated in his first LOI that on July 9, 2017, he was sitting outside of his prior girlfriend’s<sup>4</sup> house because he was concerned that her children were home alone. Ex. 6 at 50. He stated he left but returned again, and had a key so he entered her house. *Id.* He stated that they were arguing, she started screaming, and he put his hand over her mouth. *Id.* The Individual stated that she “snatched” his hand off of her mouth which resulted in a scratch to her nose. *Id.* He stated that her daughter called the police, and when they arrived, they arrested him. *Id.* Law enforcement records obtained by OPM reflect that on July 9, 2017, the Individual was arrested for aggravated burglary and domestic assault. Ex. 8 at 188, 221–22. According to a police incident report, the prior girlfriend told the police that her daughter woke her up to inform her that the Individual had entered their house without permission. *Id.* at 197. She said that the Individual then entered her bedroom, and they were arguing as he asked her where she had been, and the prior girlfriend kept asking him how he entered her house. Ex. 8 at 197. Police observed that the prior girlfriend had a scratch on her nose, and the blood was fresh. *Id.* She told police that when she attempted to tell her children to call the police, the Individual grabbed her and covered her mouth to muffle her voice. *Id.* She stated that she did not know how her nose became cut, although the police report stated the police officer observed that it appeared to be a defensive wound. *Id.* The police investigation determined that the Individual was the primary aggressor and had entered his prior girlfriend’s house without her consent and committed a domestic assault, and therefore, the Individual was arrested. *Id.* at 198.

In the first LOI and second LOI, the Individual was asked to provide details about his 2019 charge for Non-Violent Family Offense and Order of Protection filed against him. Ex. 5 at 26, 35–36; Ex. 6 at 42–45, 58. He submitted a copy of the police report with his second LOI. Ex. 5 at 36. His description of the incident in his LOIs was generally consistent with the police report. Ex. 5 at 26, 35–36; Ex. 6 at 42–45, 58. The police report stated that the prior girlfriend reported that while she was at work, the Individual went to her residence and asked her children about her whereabouts, and then left. Ex. 5 at 36. However, he returned to her residence a short time later while she was still at work and was still parked outside her residence when she arrived home. *Id.* The prior

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<sup>4</sup> The prior girlfriend in the 2017 and 2019 incidents is not the same woman who was the victim in the Individual’s 2004 arrest and felony conviction. *See* Ex. 6 at 50 (name of prior girlfriend in 2017 arrest); *see id.* at 43 (name of prior girlfriend in 2019 incident); *see* Ex. 8 at 201 (stating name of victim in 2004 arrest).

girlfriend reported that the Individual then approached her vehicle and began beating on her car window, screamed at her, and asked where she had been. *Id.* She told police that this was an ongoing issue since they had been separated and that the Individual had shown up “beating on her front door, trying to get in while screaming and inquiring about her whereabouts.” *Id.* The report stated that the Individual was still parked outside the prior girlfriend’s residence when they arrived, and the police requested that the Individual leave her residence. *Id.* Subsequently, the prior girlfriend obtained an Order of Protection. Ex. 8 at 207–08. A summary of the prior girlfriend’s allegations for the Order of Protection obtained by OPM was consistent with the police report, added additional similar allegations, and also stated that the Individual “threatened her by saying he will harm anyone he sees her with and warn[ed] her that he [wa]s not afraid to go back to jail.”<sup>5</sup> *Id.* at 208. However, in his first LOI, the Individual stated that if he made that threat, he did not recall it, and he stated that she often made statements about him that were not true. Ex. 6 at 44. He stated that the only aggressive act he took during the incident was raising his voice, but he did not cause physical harm. *Id.* Moreover, in his second LOI, the Individual stated that although the police were called to the prior girlfriend’s residence, he was not arrested. Ex. 5. at 35.<sup>6</sup> The Individual stated in his first LOI that a court issued a Temporary Order of Protection against him, which he signed. Ex. 6 at 44. He stated that on December 19, 2019, the motion to modify the Order of Protection was dismissed and costs were waived because the prior girlfriend failed to appear in court. *Id.* at 45. He submitted a copy of the court order which showed that the Order of Protection was dismissed without prejudice on December 19, 2019. *Id.* at 58; Ex. 8 at 208 (Court records obtained by OPM reflected that the motion to extend the Order of Protection was dismissed as the prior girlfriend failed to appear).

In the first LOI, the LSO asked the Individual to explain what led to him engaging in repeated criminal acts of a violent or harassing nature. Ex. 6 at 45. The Individual stated that he was in a “toxic relationship for 10 years.” *Id.* at 50. He stated, “[a]nytime she did not get her way[,] she would kick [him] out or call the police . . . A few days later[,] she would call begging [him] to come back.” *Id.* He stated he kept returning to the relationship because they were engaged and he wanted them to be a family. *Id.* He also stated that he cared about her children and had been in their lives since they were babies. *Id.* He stated at the time, he “let [his] emotions get the best of [him].” *Id.* He stated he “deeply regret[s] his actions with both women” involved in his prior offenses. *Id.* The first LOI also asked the Individual how he intends to avoid future criminal

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<sup>5</sup> The similar allegations by the Individual’s prior girlfriend include that he constantly called her phone and if she failed to respond, he would call her repeatedly. Ex. 8 at 208. She also alleged that the Individual showed up when she was at the grocery store, or getting gasoline for her car, or when she was at home, and he watched what she did or when she arrived and left. *Id.* She stated their relationship was over, and she had asked him repeatedly to leave her alone, but he did not leave her alone. *Id.*

<sup>6</sup> The Individual stated that he went to the police station to obtain the police report, and they explained to him that if there had been an arrest, it would have been stated in the report. Ex. 5 at 35. The police report reflects no indication that the Individual was arrested, but rather, it states that the police requested that the Individual leave the prior girlfriend’s residence. *Id.* at 36. The report also states that the police advised his prior girlfriend of her option to obtain an Order of Protection, which she stated that she planned to obtain, and the report stated she requested a police report “for documentation purposes only at this time.” *Id.* As such, although the Individual may have been charged with “Nonviolent Family Offense” when a court subsequently issued an Order of Protection against him, it seems he was not arrested for the 2019 incident.

activity. *Id.* at 46. The Individual gave assurances that he has removed himself from “toxic situations” and has been given a second chance at life and a family, which he “does not take lightly.” *Id.* at 51. He stated that he now has a family who supports him and his future, and he knows the difference between that and toxic situations. *Id.* He also replied that he knows he has been given a “once in a lifetime job” and is very thankful for it. *Id.*

The LSO informed the Individual, in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline J (Criminal Conduct). Ex. 1 at 5–6. It also informed the Individual that he was disqualified from holding access authorization pursuant to the Bond Amendment, 50 U.S.C § 3343(c)(1)(A). *Id.* at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the DOE Counsel submitted eight numbered exhibits (Ex. 1–8) into the record. The Individual submitted twenty-seven lettered exhibits (Ex. A–Z, AA) into the record and presented the testimony of five witnesses, including himself. *See* Transcript of Hearing, OHA Case No. PSH-24-0189 (hereinafter cited as “Tr.”).

## **II. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included the SSC, which set forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline J of the Adjudicative Guidelines as well as the Bond Amendment. Ex. 1 at 5–6.

The Bond Amendment states, in pertinent part, that, absent a waiver, an agency may not grant or renew a security clearance for an individual who “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year.” 50 U.S.C. § 3343(c)(1)(A); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10, 2022) (DOE Bond Amendment Guidance) (noting additional guidance regarding the waiver process). In citing the Bond Amendment, the LSO relied upon the Individual’s incarceration from 2005 to 2009. Ex. 1 at 5.

The LSO also cites Guideline J (Criminal Conduct) as a basis for its concerns regarding the Individual’s eligibility for access authorization. Ex. 1 at 5–6. “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 LSO cited all of the criminal incidents described above in support of its Guideline J concerns. These alleged criminal incidents justify the LSO’s invocation of Guideline J. *See id.* at ¶ 30(b) (stating that conditions that could raise a security concern under Guideline J include “evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted . . .”).

### 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 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 eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### IV. Findings of Fact

The Individual's wife testified that she started dating the Individual in 2020, and although she knew him from high school, she mainly "just knew of [him]" until they reconnected and began dating. Tr. at 12. She stated that she is aware of the security concerns involving the Individual's past criminal conduct, and the Individual first told her about his criminal history within the first year of their relationship. *Id.* at 24, 33. She stated she was surprised by some of the conduct underlying the charges because it was inconsistent with her experience of who the Individual is. *Id.* at 33. The wife testified that she has reviewed the documents that have the details about his criminal charges and they were consistent with what the Individual told her, except she was not aware of one of his marijuana charges. *Id.* at 35. She asserted that she has not known him to possess or use illegal drugs. *Id.* at 42. She is aware of the efforts the Individual has made to pay any court costs or financial restitution because she accompanied him to do so. *Id.* at 24; Ex. Y (Payment Receipt dated July 29, 2004, from local circuit court showing "paid in full" for \$344.50 payment). Regarding the most recent criminal allegation on July 11, 2022, the wife testified that although the SSC stated he was "arrested," the Individual was not arrested. *Id.* at 28. She explained that one morning, the Individual put their dog outside on his chain because he had to get ready for work. *Id.* at 28. A neighbor came over, removed the dog from the chain, banged on the Individual's door and screamed and cursed at the Individual because she said the dog was barking too loud and she started to take the dog back to her house. *Id.* The wife said she did not hear the door banging, but the Individual told her about it. *Id.* The Individual requested that the neighbor return their dog, and he then put the dog inside their house. *Id.* The wife stated she then went to the neighbor's house and requested that the neighbor please do not bang on their door and curse at the Individual because

they could have resolved the matter easily by talking about it. *Id.* at 29. However, the neighbor yelled at her to get off her property and called her “horrible names” and made racist remarks about her relationship with the Individual. *Id.* at 29–30; *see* Ex. Z (Police incident report describing neighbor’s remarks). The wife testified that later that same night, the Individual called the police to inform them of the incident. Tr. at 29–30. The wife stated that after the police spoke to the neighbor, they told the police that the neighbor cursed at them, and told the police that she wanted a “no trespassing” warning against the Individual and the wife. *Id.* at 29; *see* Ex. Z. The police issued a “no trespass” warning for both parties. Tr. at 29; *see* Ex. Z. The wife stated that they have not had any issues with the neighbor since the 2022 incident, and they only allow their dog to go outside if either she or the Individual is outside with the dog. Tr. at 30.

The wife stated that she was divorced with two children and never intended to remarry, so she told the Individual he would have to “sweep her off her feet” in order for her to consider marrying him. Tr. at 13; *see* Ex. W at 1 (Wife’s letter of support dated August 14, 2024). She testified that she was concerned because she wanted to ensure that her children were taken care of, were being led by someone whom she trusted and could “look up to,” and were instilled with qualities she wanted for them as adults. Tr. at 13–14. The wife stated that she trusts the Individual to be in her home with her children and to have a leadership role in their lives because of his actions, including the fact that he was forthcoming with her about his criminal history. *Id.* at 34. She also provided an example of how the Individual actively supported her teenage daughter through a difficult mental health crisis and how much her daughter has bonded with him. *Id.* at 14–15; *see* Ex. V (Step-daughter’s letter of support dated August 1, 2024, stating the Individual is the “fatherly figure I needed in my life” and “one of the best things that has happened to me” and she finds him reliable, trustworthy, and respectful). The wife also provided an example of how the Individual also serves as a role model for her son and helped her son’s football teammate when he was struggling with school. Tr. at 15–16, 19.

The wife testified that the Individual attends counseling, and the two of them also volunteer at a food bank. Tr. at 30–31. She testified that they have talked about applying some of the tools he has learned in counseling, but she stated she does not pry about it because she feels it is not helpful. *Id.* at 31. The wife stated the Individual has never shown her any reason that he would need any kind of anger management counseling, nor has he shown anybody “that he’s anything different than . . . the kind man I know.” *Id.* She said that since she has known him, she has never thought he “needed any kind of reformation.” *Id.* She indicated that the Individual described in the police reports “is a different person than the [Individual] that I know.” *Id.* She stated she believes he changed his past behavior before she knew him. *Id.* The wife also provided an example of how he handled the 2022 trespassing event, and stated that he did not get angry, but instead he removed himself to process things before he got angry. *Id.* at 43–44. She also testified that when the two of them have disagreements, he waits to talk about it when everybody is calm, and then he validates listening to her perspective “rather than coming right back . . . [with] anger.” *Id.* at 44. She stated that the Individual also has a good support system, which includes her family, his mother, his aunt

and cousin, and the community that he played football with. *Id.* at 46. The wife stated she finds him to be reliable and trustworthy. *Id.* at 21–22.

The Individual’s licensed professional counselor (LPC) testified that she is a licensed mental health provider and is also a licensed alcohol and drug addictions counselor.<sup>7</sup> Tr. at 72; Ex. A at 2–3. She stated she began treating the Individual for adjustment disorder with anxiety on August 16, 2024, and they have had five sessions since then.<sup>8</sup> Tr. at 73, 89. The LPC stated she was seeing the Individual initially every week, then they changed to every other week, but they also rescheduled multiple appointments recently due to sickness and inclement weather. *Id.* at 105–06. The LPC testified that now she is considering meeting him on a monthly basis because he “really is applying the skills and is able to do that at home.” *Id.* at 106. She stated that the Individual told her he was seeking therapy because he wanted to further his employment goals and obtain his security clearance. *Id.* at 88. The LPC testified that she and the Individual developed treatment goals focused on effective problem solving, setting boundaries, adhering to laws and regulations, and developing good decision-making skills. *Id.* at 73; *see* Ex. A at 1 (Summarization of Therapy).

The LPC stated that she and the Individual discussed his past criminal conduct “a little bit” in that they discussed how to apply problem solving skills such as setting boundaries and discontinuing contact if he was around people who were making bad decisions so that he could protect his life goals, which include obtaining his security clearance. *Id.* at 76. When asked if she saw any evidence of him engaging in risky behaviors that might give her concern that he might relapse into criminal behavior, the LPC responded, “no.” *Id.* at 80. Regarding anger management, the LPC stated she could not remember if the Individual told her that he took an online anger management course. *Id.* at 93. The LPC stated that therapy “goes . . . deeper” than an anger management course because in therapy, a person can discuss actual situations where they got angry or frustrated and identify what skill they could have used and whether they forgot to do so. *Id.* She stated that in therapy, the “deeper dive” helps a person work on how to “set yourself up next time to create better habits [and] better patterns, which overall has better outcomes.” *Id.* The LPC testified that she also worked on “cognitive processing skills” with the Individual to help him reframe his thought patterns to help with emotional regulation and decision-making. *Id.* at 81. She provided an example of how the Individual successfully used emotional regulation skills to resolve frustrations when dealing with situations where his children tested his patience. *Id.* at 99.

The LPC opined that she has a “positive outlook” on the Individual’s prognosis in that he is engaged in his sessions, communicates well, and applies the skills he’s learned, all of which show progress, willingness, and ability to continue to be able to succeed at and comply with his treatment goals. *Id.* at 102–03. She also stated that the Individual has a good support system which benefits

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<sup>7</sup> When asked, the LPC stated that based on her work with the Individual, he has no current drug use issues that she is aware of. Tr. at 100.

<sup>8</sup> The LPC opined that the Individual does not have any emotional, mental, or personality conditions that are currently impairing his judgment, stability, reliability, or trustworthiness. Tr. at 108. Additionally, the LPC testified that she previously knew the Individual when they went to school together. *Id.* at 77. She stated that her therapy is focused on teaching him skills for how to continue to improve in life, which is “more of a shorter term thing.” *Id.* at 77. She stated if he needs counseling to discuss things related to his past, it would be in his best interest for her to refer him to another therapist who did not know him, so that “ethically they don’t have a bias.” *Id.*



him when he needs someone to discuss how to make the best decisions moving forward. *Id.* She stated that the Individual's wife is his primary support system, and she also stated that being a role model and mentor for his older children benefits him because it helps keep him accountable. *Id.* at 98. The LPC testified that the Individual has shown that he is "doing better over time, getting the help . . . [he] need[s], not having to go through recidivism, . . . and moving forward and reaching those goals." *Id.* at 86. She stated that after she has determined that the Individual achieves his therapy goals, if he needs to return to therapy, she is willing to resume therapy with him "if it's job related or something like that" as opposed to addressing past events that are affecting his current life. *Id.* at 102.

The Individual's colleague testified that he has known the Individual for a little more than one year, and he worked closely with the Individual on a daily basis when they previously worked in the same department. *Id.* at 111–12, 126. The colleague stated he was also the Individual's supervisor from July 22, 2024, through December 2, 2024. *Id.* at 114. He testified that during the time he supervised the Individual, the Individual consistently followed rules. *Id.* at 120. The colleague provided an example of the Individual's integrity when he supervised the Individual and the Individual had, on one occasion, accidentally taken some keys after his shift ended. *See id.* at 114–15. The self-reported to the colleague that he discovered this when he arrived home, and he immediately drove back to the worksite and returned the keys. *Id.* The colleague also testified that as stated in his letter, the Individual "not only meets, but often exceeds expectations on the job," and one of his key strengths is his "careful approach in decision making." *Id.* at 116–17; Ex. D (Colleague's letter of support dated August 31, 2024). He provided an example of how the Individual successfully handled a difficult coworker who had offended him by making derogatory comments about people who have criminal convictions. *Tr.* at 117. The colleague testified that the Individual handled the conflict so well that the coworker changed his perspective towards the Individual and apologized to him. *Id.* The colleague stated that he has no concerns about the Individual's willingness to comply with laws, rules, and regulations and provided examples of how the Individual has taken initiative to ensure compliance with the regulations of their job. *Id.* at 120, 123.

The Individual's friend and coworker (the friend) testified that he has known the Individual since they were children. *Id.* at 50–51; *see* Ex. G (Undated letter of support from friend). He stated that he was aware that the Individual had previously served a prison sentence when he was in his twenties. *Tr.* at 53. The friend asserted that the Individual will not make the same mistakes again because he has matured and has changed his social circle so that he is involved with a better peer group and has a great wife and family. *Id.* at 54–57. He stated he finds the Individual to be trustworthy and reliable. *Id.* at 58; Ex. G.

In addition to the four aforementioned letters of support from his wife, colleague, step-daughter, and friend, the Individual also submitted ten additional character reference letters. Ex. C; Ex. F; Ex. H; Ex. L; Exs. Q–U; Ex. X. Letters from his extended family, his in-laws, his former teacher and principal, and a childhood acquaintance all attested to his positive character traits such as being compassionate, kind, remorseful for his past actions, trustworthy, reliable, helpful, and respectful. Ex. C; Ex. L; Exs. Q–U. In addition, his current supervisor stated she has supervised him since February 2024, and finds that he is respectful, easy to work with, and calm, has a positive attitude, often volunteers for extra jobs, and is dependable. Ex. X.

The Individual also submitted a copy of a documented list of annual donations that he made to his local fire fighters' association from October 2021 to July 2024. Ex. P.

At the hearing, the Individual testified regarding his 1999 and 2001 offenses, which both involved marijuana possession. Tr. at 132-33, 136-37, 153-55. His testimony regarding his 1999 and 2001 citations, arrests and charges was consistent with the information he provided in his LOIs. Ex. 5 at 29-30, 32-33. Regarding the 1999 offense, he testified that although he believed he was trying help his friend by falsely telling the police that the marijuana belonged to the Individual, he recognizes that he was wrong and was hurting himself. Tr. at 132. He asserted that in the future, he would not put himself in a situation where criminal activity was occurring, and if he did observe criminal activity, he would not lie to the police about it. *Id.* at 154. Regarding the 2001 incident, he testified that in the police report, it stated that the man who called the police had also called a mental health institution, so there was indication he had mental health problems. Tr. at 154; Ex. 5 at 33 (police incident report stated the person who called the police also had called a mental institution and reported he was having mental health symptoms including suicidal ideation). When asked about his marijuana use in the last ten years, the Individual denied using marijuana and stated he does not associate with people who use marijuana. Tr. at 155-56. He also testified because he is a commercial driver's license (CDL) holder, he gets drug tested often, and he took a random drug test the day prior to the hearing.. *Id.* at 156.

Regarding his 2004 felony for Aggravated Assault, the Individual testified that his relationship with his then-fiancée generally involved arguing, but he indicated there was not physical fighting, because he had perceived that she might have been unfaithful to him during their relationship. *Id.* at 156-57. He stated that he did not know what led him to take the actions that he did involving the assault, except that he was "just fed up with it [be]cause [he] knew she's been lying for some time." *Id.* at 157. He said they were engaged and had a daughter together, and he "just lost [his] mind" and stated he is very ashamed of it. *Id.* He stated that he pleaded guilty to the charges, and was sentenced to six years in prison. *Id.* at 138-39, 157-58. He stated that he did not serve the full six years of his prison sentence because he got released for good behavior, and after his prison release, he was not placed on parole nor did he have any other requirements.<sup>9</sup> *Id.* at 139-40, 178. He testified that before going to prison he had custody of his son, and while he was in prison, his son and the Individual's mother would visit him every other weekend. *Id.* at 139, 141. He stated that after seeing his son visit him for the first time in prison, he became motivated to get out of prison early because he wanted to fulfill his role as a father and see his son. *Id.* at 139-40. The Individual testified that he is still in contact with his son who is now an adult and last spoke with him the night before the hearing. *Id.* at 142; *see* Ex. C (Letter from the Individual's son dated September 9, 2024).

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<sup>9</sup> The Individual testified that regarding his felony conviction, he filed a petition to restore his full rights of citizenship on November 1, 2024. Tr. at 149-51; Ex. J (Copy of Petition to Restore Full Rights of Citizenship filed on November 1, 2024); Ex. I (paid fees for petition dated November 1, 2024). He testified that his petition has not yet been granted due to pending litigation regarding the issue of restoring voters rights for convicted felons in his state of residence. Tr. at 150-51; *see* Ex. AA (news article dated January 16, 2025, discussing court case pending before federal circuit court); *see* Ex. K (Email dated December 18, 2024, from local district attorney's office regarding the pending litigation).

Regarding the Individual's 2005 four counts of contempt charges, the Individual testified that he was cited for contempt of court because he failed to appear in court while he was incarcerated. Tr. at 144–45.

Regarding the Individual's arrest and charge in 2017 and the 2019 incident involving the Order of Protection, the Individual's testimony regarding the offenses was consistent with his responses in his LOIs. Tr. at 159–63; Ex. 5 at 26, 35–36; Ex. 6 at 42–45, 50, 58. He testified that both the 2017 and the 2019 incidents involved the same woman. Tr. at 159–60. Regarding the 2017 incident, he testified that the charges were eventually dismissed because he and his prior girlfriend reconciled their relationship, and he stated this was an ongoing pattern in their relationship. Tr. at 161. The Individual testified about the efforts he made to get the charges expunged.<sup>10</sup> Tr. at 143–44; Ex. B (Order for Expungement signed September 4, 2020 and stated completed by his state's Bureau of Investigation dated October 17, 2024). Regarding the 2019 Order of Protection, which was later dismissed, the Individual testified that his prior girlfriend failed to appear in court because they had again reconciled their relationship. Tr. at 162. He stated that he believes he was ultimately responsible for the choices he made in the relationship. *Id.* at 163.

Regarding the 2022 trespass warning, the Individual testified that both he and his neighbor received trespass warnings so that they are not permitted to enter each other's property. *Id.* at 165. He stated that he called the police when he got home later on the date of the incident, because he wanted to file a trespass incident due to his concern that she could destroy some of his property out of spite because of some of the racial comments she had made at the time of the incident. *Id.* at 166–67; *see* Ex. Z at 2 (Police incident report stating the Individual's wife reported the neighbor using racial slurs to her with regard to the Individual). The Individual testified that he was not arrested for the trespass incident. Tr. at 179; *see* Ex. Z (Police incident report does not state the Individual was arrested, and states, "Both parties were explained options and informed of trespass warnings."). He stated that when he requested a trespass warning, the police told him that after they spoke with the neighbor, she also wanted a trespass warning against him, too, so the police wrote down the names and addresses of both parties but did not arrest him. Tr. at 180. He indicated that he was uncertain why he received the trespass warning because he has never been on the neighbor's property, but he admitted that the police report contained mutual trespass warnings for him and the neighbor. *Id.* at 166.

The Individual testified regarding his therapy with the LPC and his anger management course. Tr. at 151–52, 180–84. He stated that in August 2024, he took an eight-hour online anger management course to prove to the DOE that he is willing to do whatever was asked of him. *Id.* at 180–81. The Individual testified that he has had approximately four months of therapy with the LPC, and currently meets with the LPC once a month. *Id.* at 181–82. He stated that he plans to continue attending therapy with her until she will not see him anymore or if they run out of things to discuss. *Id.* at 186. He testified that he initially attended therapy to prove to the DOE that he was willing to

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<sup>10</sup> The Individual also submitted an updated copy of state Bureau of Investigation report of criminal history records dated December 20, 2024, reflecting that his July 2017 offenses were no longer listed. Ex. O; *see* Ex. N (Previous state Bureau of Investigation report of criminal history records dated September 13, 2024, which included July 2017 charges for aggravated burglary and domestic assault with no final disposition listed).

“become a better person” and to obtain his security clearance. *Id.* at 183. He stated, however, that he discovered that he really likes participating in therapy because it gives him the opportunity to talk with someone who gives him honest feedback. *Id.* He explained that his therapy with the LPC has taught him to identify his emotions and be more in control of his mind so that his emotions will not control his reactions. *Id.* at 165. He stated that he has learned that if his anger starts to get to a certain level, it is best to walk away or shift his thinking to something else. *Id.* at 152. He provided an example of a specific coping skill he uses and finds helpful, which his LPC taught him regarding how to change the focus of his thoughts when he feels that his emotions are rising “above [his] threshold.” *Id.* at 169. The Individual also provided two examples of how he used his coping skills to successfully manage his thoughts and reactions when he dealt with his step-son’s challenging behaviors, and when he dealt with his difficult neighbor during the 2022 trespassing incident. *Id.* at 165–66, 169. The Individual asserted his belief that if he had earlier developed the anger management skills and coping skills which he later learned from the LPC, he would have reacted differently during the past 2017 and 2019 incidents. *Id.* at 164–65.

The Individual testified that he has learned from his wife and from his past relationships that he cannot control anyone, and that he needs to take responsibility for his own actions. *Id.* at 163. He asserted that he would not return to criminal activity. *Id.* at 168, 184–86. He stated that he is motivated in part by his job because it keeps him accountable due to his obligations to self-report if he was involved in criminal activity. *Id.* at 184. He also testified that he still feels ashamed of his past criminal conduct, so he is motivated to ensure that he will not return to criminal activity in the future. *Id.* at 168. The Individual also stated he has changed as a person due to therapy and being in a better relationship, and has changed his environment by spending time with different people from those he spent time with during his past criminal activity. *Id.* at 184–86. He also stated that his wife is his main support person and he does not want to do anything that would embarrass her by his actions. *Id.* at 168, 186.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the regulations at 10 C.F.R. § 710.7(a), the applicable factors prescribed in 10 C.F.R. § 710.7(c), the Adjudicative Guidelines, the Bond Amendment, and the DOE Bond Amendment Guidance. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security. After due deliberation, I have determined that the Bond Amendment disqualifies the Individual from holding a security clearance, and that the Individual has not mitigated the Guideline J security concerns. I cannot find that granting the Individual’s DOE security clearance will not endanger the common defense and security and is consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security clearance should not be granted. The specific findings that I make in support of this Decision are discussed below.

## A. 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.

Adjudicative Guidelines at ¶ 32.

The Individual has an extensive and significant history of criminal activity that includes his August 2004 conviction of Felony Aggravated Assault, which is a serious offense. I recognize that some of his other criminal offenses are over twenty years old and, for some of his past charges, there is no indication that the behavior recurred. For instance, both of the Individual's charges in 1999 and 2001 involved marijuana possession, and there is no evidence in the record that indicates he has used marijuana since his 2001 arrest or that he has associated with people who use marijuana. Further, his LPC, who is also a licensed drug and alcohol counselor, stated the Individual has no current drug use issues that she is aware of. I also recognize that the Individual's October 2005 contempt charges for failure to appear in court while he was incarcerated occurred nearly twenty-years ago and there is no indication that this behavior has recurred. For the 1999, 2001, and 2005 offenses, I find that sufficient time has elapsed since the behavior occurred such that it is unlikely to recur. *Id.* at ¶ 32(a). Regarding his 2022 trespass warning, this is a relatively recent incident. Therefore, I cannot find that so much time has passed since the 2022 behavior occurred. *Id.* at ¶ 32(a).

With regard to the remaining criminal offenses, however, I find it significant that after the Individual's 2004 conviction for a crime that involved aggravated assault against his then-fiancée, for which he served four years in prison, he later returned to engaging in acts involving domestic violence with his girlfriend, specifically in 2017. Moreover, as OPM records reflect, in 2019 a court granted an Order of Protection against the Individual after he threatened his prior girlfriend, and as she alleged, he warned her that he was "not afraid to go back to jail." Ex. 8 at 208. The fact that the Individual returned to engaging in similar acts involving domestic violence several years after his release from prison indicates to me that he has not yet shown that such behavior is unlikely to recur. Moreover, given that the Individual has a lengthy history of arrests through 2019 in relation to the relatively short period of time that he has refrained from criminal activity, I cannot find that so much time has elapsed since the criminal behavior happened. *Id.* at ¶ 32(a). While I

credit the Individual for taking steps to address how to better manage his anger by attending counseling and taking an online anger management course, I find that this is insufficient evidence at this time, especially given that he has only had five therapy sessions, to convince me that the criminal conduct is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment. *Id.*

As for mitigating condition (c), with the exception of the 2022 offense, the Individual accepted responsibility for the alleged offenses listed in the SSC. Accordingly, I cannot conclude that the LSO's allegations lack reliable evidence to support a finding that the Individual committed the offenses. Regarding the 2022 offense, I note that the Individual denied being arrested, and he submitted a police report which did not state that he was arrested, but did document that he received a trespass warning. Moreover, I note that the Individual was proactive in contacting the police because of his concerns about the neighbor's behavior and has never been on the neighbor's property nor had any problems with the neighbor since the incident. As such, I find that the Individual has mitigated concerns associated with the 2022 trespass allegations under the mitigating factor at 32(c).

Turning to mitigating condition (d), I recognize that the Individual has not engaged in criminal activity in five years, given the mitigating circumstances of the 2022 trespass warning, since his 2019 charge for nonviolent family offense and the issuance of the Order of Protection. I also recognize that the Individual has a positive employment record in this position with a DOE contractor as evidenced by the testimony of his colleague who was his former supervisor, and as supported by the letter provided by his current supervisor. He has also presented positive testimony from his LPC and his wife and colleague demonstrating that he is making progress in managing his anger when dealing with difficult circumstances. That said, while his therapy is beneficial and he is making progress in addressing his behavior, I find that five therapy sessions and an eight-hour online anger management course do not constitute sufficient evidence of successful rehabilitation given the Individual's history of domestic violence offenses. As such, I cannot find that the Individual established the applicability of mitigating condition (d). *Id.* at ¶ 32(d).

Regarding the remaining mitigating factors, I have no evidence before me indicating that the Individual was pressured or coerced into committing the alleged criminal acts. *Id.* at ¶ 32(b). Accordingly, I cannot find that mitigating condition (b) applies.

## **B. The Bond Amendment**

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

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

## **VI. Conclusion**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under the Bond Amendment and 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 the testimony and other evidence presented at the hearing, I have found that the Bond Amendment disqualifies the Individual from holding a security clearance, and the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline J. Accordingly, I have determined that the Individual's access authorization should not be granted.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon  
Administrative Judge  
Office of Hearings and Appeals