United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)		
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Filing Date: January 2, 2025	)	Case No.:	PSH-25-0056
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Issued: May 8, 2025

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXX (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."[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, who is employed by a DOE contractor, was first granted access authorization in connection with his employment in 2020. Hearing Transcript, OHA Case No. PSH-25-0056 (Tr.) at 48. On January 3, 2023, the local security office (LSO) received a personnel security information report (PSIR) indicating that the Individual had been arrested and charged with Driving While Intoxicated (DWI) and Reckless Driving. Exhibit (Ex.) 12; *see also* Ex. 11 (follow-up PSIR received by the LSO on January 4, 2023, containing a booking sheet and statement by the arresting officer).[2] In response to letters of interrogatory from the LSO in March 2023 (First LOI) and September 2024 (Second LOI), the Individual indicated that he entered into a pre-trial deferment program related to the DWI and Reckless Driving charges pursuant to which he was placed on a fifteen-month term of probation from March 2023 to June 2024. Ex. 13 at 71; Ex. 14 at 84.
On July 29, 2024, the LSO received a PSIR indicating that the Individual had been arrested and charged with Assault Causing Bodily Injury, Terroristic Threats, and Interfering with Emergency

[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 exhibits submitted by DOE were compiled in a single PDF exhibit notebook. This Decision will cite to pages within the exhibit notebook in the order in which they appear regardless of their internal pagination.

Request for Assistance in connection with alleged acts of domestic violence by the Individual against his then girlfriend, now fiancée (Fiancée). Ex. 9; *see also* Ex. 8 (follow-up PSIR received by the LSO on July 30, 2024, containing a booking sheet and statement by the arresting officer); Tr. at 48 (testifying at the hearing that he and his Fiancée became engaged to be married in January 2025). A one-month emergency order of protection was issued against the Individual shortly after his arrest ordering him to refrain from communicating with his Fiancée, going to their shared residence, or going to her place of work. Ex. 15.

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 at 7–9. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline J of the Adjudicative Guidelines. *Id.* at 6.

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 conducted an administrative hearing. The LSO submitted seventeen exhibits (Ex. 1–17). The Individual submitted one exhibit (Ex. A). The Individual testified on his own behalf and offered the testimony of his Fiancée. Tr. at 3, 10, 30. The LSO did not call any witnesses to testify.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 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 SSC cited the Individual having been arrested and charged with DWI and Reckless Driving in December 2022, arrested and charged with Assault Causing Bodily Injury, Terroristic Threats, and Interfering with Emergency Request for Assistance in July 2024, and being subject to an emergency order of protection related to alleged domestic violence. Ex. 1 at 6. The LSO's citation to the Individual having been arrested and charged with criminal conduct justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(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 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

On December 30, 2022, the Individual attended a wedding where he consumed alcohol. Ex. 10 at 52; Ex. 13 at 70. When the Individual attempted to drive home from the wedding, a law enforcement officer observed the Individual driving erratically and failing to travel in a single lane. Ex. 11 at 58; *but see* Ex. 13 at 70 (Individual claiming in response to the First LOI that he only briefly swerved when he was distracted by his Fiancée). The law enforcement officer pulled the Individual over and, upon approaching the Individual's vehicle, perceived that the Individual "smelled strongly of alcohol[]." Ex. 11 at 58. The Individual refused to complete a field sobriety test and was subsequently arrested and charged with DWI and Reckless Driving. *Id.*

In March 2023, the Individual entered to a pre-trial deferment agreement pursuant to which the DWI and Reckless Driving charges would be dismissed following the Individual's completion of a fifteen-month term of probation, a drug and alcohol evaluation and any recommended treatment, and a victim impact panel, as well as paying fees and completing forty hours of community service. Ex. 17 at 130 (reflecting information obtained by DOE from the FBI showing that the Individual entered into pre-trial diversion); Ex. 13 at 71 (summarizing the terms of the agreement in response to the First LOI). The Individual complied with all of the terms of the agreement and, following his completion of the fifteen-month term of probation in June 2024, the charges against the Individual were dismissed. Ex. 13 at 71. The Individual's access authorization had been suspended in connection with the LSO's adjudication of the security concerns presented by his conduct, and it had been restored following an administrative hearing before an OHA administrative judge. Tr. at 36; *Personnel Security Hearing*, OHA Case No. PSH-23-0113 (2023).[3] The Individual asserts he has not consumed alcohol since his arrest for DWI. Tr. at 35; *see also id.* at 25 (testimony of the Individual's Fiancée that she has not seen him consume alcohol since the December 2022 arrest).

From July 24, 2024, to July 25, 2024, law enforcement officers were summoned to the Individual's home in response to numerous calls related to domestic disputes between the Individual and his Fiancée. Ex. 8 at 38; Tr. at 26. The disputes between the Individual and his Fiancée began on July 24, 2024, after he observed her messaging another man on her phone and he snatched the phone from her in order to see the messages. Ex. 7 at 31; Ex. 14 at 82; Tr. at 12, 50; *see also* Tr. at 51 (Individual's testimony that the dispute escalated because he was "upset" and "wanted to get to

[3] Decisions issued by OHA are available on the OHA website located at http://www.energy.gov/OHA.

the bottom of it, to know what was actually going on"). The Individual left the residence after his Fiancée threatened to call the police, which the Fiancée's teenage son ultimately did when he heard the Individual and his Fiancée yelling. Ex. 8 at 38; Ex. 14 at 82; Tr. at 12; *see also* Tr. at 26 (testimony of the Fiancée that she threatened to call the police because "things were so heated" and she hoped "the threat would get us to just separate").

When the Individual returned to the home to gather belongings, the dispute between him and his Fiancée resumed, the Individual left the home again, and another call was made to law enforcement. Ex. 8 at 38; Ex. 14 at 82; Tr. at 12. The Individual returned to the home a second time on July 25, 2024, again to gather belongings, and the dispute resumed once again. Ex. 8 at 38; Ex. 14 at 82. During this dispute, another call was made to the police by the Fiancée's son. Ex. 8 at 38.

When a law enforcement officer arrived at the home, he personally heard the Individual "raising his voice at the [Fiancée]." *Id.* The Individual's Fiancée alleged to the law enforcement officer that the Individual had threatened to hurt her while brandishing his closed fist and prevented her from calling 911 during the dispute. *Id.*; *but see* Tr. at 27 (denying at the hearing that she made this statement). The law enforcement officer arrested the Individual, who was charged with Assault Causing Bodily Injury, Terroristic Threats, and Interfering with Emergency Request for Assistance. Ex. 8 at 38; *see also* Tr. at 14 (testimony of the Individual's Fiancée that the arrest was the result of "a misunderstanding" and was partially motivated by the officers being "tired of the cops being called"). The following day, a judge issued an order of emergency protection prohibiting the Individual from, among other things, communicating with his Fiancée or coming within five hundred feet of their residence or her place of employment for one month. Ex. 15.

In January 2025, the Individual pleaded guilty to two of the charges stemming from his July 2024 arrest[4] and entered into a domestic violence early intervention program pursuant to which he "accept[ed] responsibility for [his] behavior" and the prosecution of the Individual was deferred until January 2026. Ex. A at 2; Tr. at 44. The agreement provided that the charges would be eligible for dismissal in January 2026 provided that the Individual refrained from committing any criminal conduct, abstained from illegal drugs and alcohol, submitted to drug and alcohol testing, completed a domestic violence class, and paid applicable fees. Ex. A at 2–3. As of the date of the hearing, the Individual had completed three individual counseling sessions out of the ten required pursuant to the early intervention program. Tr. at 38–39. At the hearing, the Individual was only able to provide minimal detail on what he had learned through counseling and explained that he was "only three sessions into it."[5] *Id.* at 53.

[4] The "Terroristic Threat" charge was waived by the prosecuting agency. Ex. A at 2, 5.

[5] When asked for specific examples of what he had learned to mitigate the risk of potential recurrence of domestic violence situations, the Individual responded as follows:

> [T]he main thing that I take away from it thus far, Judge, is realizing, you know, when an issue occurs and kind of the – the thinking patterns, I believe, is the term that they call it, like pattern thinking, thinking patterns, how to recognize that and – and how to kind of stop that certain way of thinking.

Tr. at 53.

Several months after the Individual's July 2024 arrest, the Individual's Fiancée moved into her parents' home due to medical issues and losing her job. *Id.* at 11, 17. The Individual and his Fiancée reconciled during a conversation after the order of emergency protection expired, and in January 2025 they became engaged to be married. *Id.* at 48–49; *see also id.* at 22 (testimony of the Fiancée that the Individual's behavior in connection with his July 2024 arrest was "completely out of character for him"). In late January or early February of 2025, the Individual moved in with his Fiancée in her parents' home. *Id.* at 11. The Fiancée's parents agreed to "help [them] through the hearing to get back on [their] feet," after which she and the Individual would try to obtain their own residence and "go from there." *Id.* at 18. As of the date of the hearing, the Individual and his Fiancée were considering pursuing couples therapy, but did not have health insurance and could not afford to pay for the counseling out of pocket. *Id.*

V. ANALYSIS

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.

Less than one year has passed since the Individual's domestic violence-related arrest in July 2024 and he is currently serving probation in connection with the offense. Moreover, the Individual's July 2024 arrest came shortly after the adjudication of security concerns related to his December 2022 DWI and his completion of probation in connection with that offense. In light of the relative recency of the Individual's domestic violence-related offense, and the rapidity with which the Individual returned to problematic behavior following the resolution of his December 2022 DWI, I find that insufficient time has passed for me to conclude that the Individual's criminal conduct does not cast doubt on his reliability, trustworthiness, and good judgment. Moreover, the Individual's description of both of his arrests indicated that they took place under ordinary circumstances. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable to the facts of this case because the Individual did not assert that he was pressured or coerced into committing either offense. *Id.* at ¶ 32(b).

There is no dispute that the Individual committed the 2022 DWI. In her hearing testimony, the Individual's Fiancée disputed the seriousness of the Individual's conduct in connection with his domestic violence-related arrest and the accuracy of some of the information in the arrest report prepared by the arresting law enforcement officer. However, the arrest report was prepared by the law enforcement officer contemporaneously with the officer's observations of the Individual's conduct and the statements of the Individual's Fiancée and her son. The Individual's Fiancée's recollection of the events of July 2024 are likely less vivid after the passage of approximately nine months than were the recollections of the law enforcement officer when the officer prepared the arrest report, and the Individual's Fiancée's interpretation of those events may have changed since they occurred in light of her engagement to the Individual and the potential economic impact that the loss of the Individual's security clearance could have on their planned future together. Moreover, in entering into the domestic violence early intervention program, the Individual "accept[ed] responsibility" for his behavior in connection with the July 2024 arrest. In light of the details included in the arrest report, the Individual's plea agreement resulting in his participation in the domestic violence early intervention program, and the fact that I do not wholly credit the Individual's Fiancée's testimony, I find that there is some reliable evidence that the Individual committed the acts that resulted in the domestic violence-related charges and that the third mitigating condition is inapplicable. *Id.* at ¶ 32(c).

The Individual completed a lengthy probation and adjudication of his eligibility for access authorization following his DWI charge, only to be arrested and charged with another offense shortly thereafter. The Individual's participation in the domestic violence early intervention program is in its early stages; he has completed only three of the required counseling sessions, cited the limited counseling he has participated in to explain his limited ability to describe the benefits he has realized through counseling in his hearing testimony, and is still subject to supervision by a probation officer for over seven more months. Moreover, the Individual has not brought forward any evidence of job training or higher education, good employment record, or constructive community involvement post-dating his July 2024 arrest. In light of the Individual's recent demonstration of poor judgment after exiting the supervised environment of probation and the adjudication of his access authorization, I cannot conclude that he will not once again exercise poor judgment when he is no longer under the scrutiny of the domestic violence early intervention program, the adjudication of his eligibility for access authorization, and the parents of his Fiancée with whom he currently resides. For the aforementioned reasons, I find that the Individual has not established the applicability of the fourth mitigating condition. *Id.* at ¶ 32(d).

Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns raised 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 Guideline 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 not brought forth sufficient evidence to resolve the security concerns asserted by the LSO. 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