

of interrogatory (LOI) seeking details regarding the circumstances and disposition of the Individual's arrest and charges, but did not receive a response. Ex. 5; Ex. 7; Ex. 8.

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 1-3. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E and J of the Adjudicative Guidelines. *Id.* at 4-5.

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 conducted an administrative hearing. The LSO submitted nine exhibits (Ex. 1-9). The Individual submitted thirteen exhibits (Ex. A-M). The Individual testified on his own behalf. Tr. at 7. The LSO did not call any witnesses to testify.

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. 1 at 4.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, 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. The following will normally result in an unfavorable national security eligibility determination . . . (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including . . . completing security forms or releases

Adjudicative Guidelines at ¶ 15. The SSC alleged that the Individual failed to self-report the temporary order of protection and criminal charges against him as required and failed to respond to the LSO's communications or complete an LOI related to these incidents. Ex. 1 at 4. The LSO's allegations that the Individual failed to cooperate with security processing by not responding to the LSO's e-mails or completing the LOI and concealed relevant information by failing to report the criminal charges and temporary order of protection as required justify its invocation of Guideline E.² Adjudicative Guidelines at ¶¶ 15(a), 16(b).

² The SSC also listed the Individual's alleged criminal conduct and the temporary order of protection issued against him under Guideline E. Ex. 1 at 4. I understand this information to have been provided in support of the aforementioned allegations under Guideline E. However, to the extent that the LSO sought to allege that the Individual's alleged conduct constituted "disruptive, violent, or other inappropriate behavior" or "a pattern of dishonesty or rule violations" under Guideline E, such allegations would be misplaced because they may only be made under Guideline E if the information upon which they are based "is not explicitly covered under any other guideline" Adjudicative Guidelines at ¶ 16(d). As the LSO cited the Individual's alleged criminal conduct as presenting security concerns under Guideline J, it may not also be raised under Guideline E. Therefore, I will only address the security concerns presented by the Individual's alleged criminal conduct under Guideline J.

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the other basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "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 temporary protection order issued against the Individual as well as the Individual's having been arrested and charged with three counts of Assault and Battery on a Family Member, one count of Assault and Battery, one count of Strangulation, and one count of Preventing a 911 Call. Ex. 1 at 5. 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

A. Individual's Background and Military Service

As of the date of the hearing, the Individual was in his mid-forties and had held security clearances with a variety of agencies since approximately 2000. Tr. at 7, 17–18. The Individual is a senior officer in a branch of the U.S. Military and has served for several decades. Ex. C at 8–9. The Individual established an excellent service record and is well regarded by those with knowledge of his work. Ex. I at 76–83 (positive performance reviews related to the Individual's military service); Ex. J at 85–87 (letters of recommendation written on behalf of the Individual in 2022). Through his service, the Individual has received numerous commendations and awards. Ex. H at 49–55, 68–74; *see also* Tr. at 15–16 (testifying as to how his actions in Afghanistan in 2001, for which he received a commendation medal, contributed to saving the lives of several soldiers); Tr.

at 16–17 (testifying as to how his actions in 2022, in connection with the evacuation of Afghanistan, resulted in his being awarded a commendation medal). The Individual is currently pursuing a doctoral degree which he is expected to earn in 2028. Tr. at 9–10.

The Individual was married to his first wife for over a decade until their divorce in 2016. *Id.* at 7, 28. The Individual married his second wife in 2016, and they subsequently divorced in 2018. *Id.* at 8. The Individual’s second wife obtained a “stalking injunction” against the Individual in 2018. *Id.* at 26–27. According to the Individual, during a difficult period in the relationship, he “left her behind” in another state to pursue a job opportunity in the state in which he currently resides. *Id.* at 27. The Individual claimed that his second wife threatened to commit suicide “because she missed [him],” he returned to the state in which she resided to check on her wellbeing, and at some point during the visit she “told [him] to leave” and he declined to do so until the next day because he “didn’t have anywhere to go” *Id.* at 28. According to the Individual, his second wife subsequently obtained the injunction against him. *Id.*

In December 2023, the Individual began dating a woman (Girlfriend) he met online who resided in another region of the country. *Id.* at 19–20, 48. In approximately June 2024, at the invitation of the Individual, the Girlfriend and her children moved into the Individual’s residence. *Id.* at 48. According to the Individual, soon after the Girlfriend moved in with him, she began displaying negative behaviors he had not previously observed including drug use, excessive alcohol consumption, and leaving her children with him while going out at night. *Id.* at 20, 31–32, 42. According to the Individual, the Girlfriend became violent and aggressive when he confronted her regarding these behaviors. *Id.* at 32, 48–49 (testifying that the Girlfriend “put a lot of holes in the walls[and] did damage to cars”). The Individual communicated to the Girlfriend that he wanted to end the relationship in approximately November 2024, and the Girlfriend left the state for a time, but they later reconciled and the Girlfriend resumed residing with the Individual in late December 2024 or early January 2025. *Id.* at 48, 50.

B. Individual’s Alleged Criminal Conduct and Arrest

On February 8, 2025, a temporary protection order was issued against the Individual in favor of the Girlfriend. Ex. 3 at 2–5; Ex. B at 6. A warrant was issued for the Individual’s arrest and, on February 16, 2025, he was arrested and charged with the following alleged offenses:

1. Assault and Battery on a Family Member – Alleged Offense Date October 30, 2024
2. Strangulation – Alleged Offense Date January 29, 2025
3. Assault and Battery on a Family Member – Alleged Offense Date January 29, 2025
4. Assault and Battery on a Family Member – Alleged Offense Date February 5, 2025
5. Preventing a 911 Call – Alleged Offense Date February 5, 2025
6. Assault and Battery – Alleged Offense Date February 6, 2025

Ex. 4; Ex. 3 at 7–8; Ex. B at 6. The Individual alleged that the Girlfriend made the allegations in retaliation for his expressing a desire to end the relationship. Tr. at 19, 50–51. According to the Individual, the Girlfriend called the police after he suggested ending the relationship in January 2025, but he believed that they had reconciled by the date of his arrest on February 16, 2025. *Id.* at 20–21, 29–30, 50–51; *see also id.* at 21 (testifying that on the day of his arrest he was “driving

around . . . looking at different cars [to buy] for her because she needed a vehicle”). The Individual denied knowing that he was being charged with any offense until he was arrested on February 16, 2025. *Id.* at 21.

C. LSO’s Inquiry into the Derogatory Information

The LSO received the NCIC report concerning the temporary protection order and warrant for the Individual’s arrest on February 8, 2025. Ex. 3 at 2, 7; *see also id.* at 7, 10 (indicating that “[t]he wanted subj [sic] is poss [sic] armed with AR or handguns in his vehicle” and was “armed and dangerous”). On February 10, 2025, the LSO sent two e-mails, one to the Individual’s work e-mail address and another to a personal e-mail address belonging to the Individual, requesting that the Individual respond so that the LSO could transmit sensitive information to the Individual. Ex. 5 at 3–4. A third e-mail requesting a response was sent to the Individual on February 11, 2025. *Id.* at 5–6. The Individual did not respond to these e-mails. The Individual testified at the hearing that he did not remember seeing the e-mails and noted that he was busy preparing to enter active duty. Tr. at 39, 43–44; *see also* Ex. F at 18 (ordering the Individual to enter active duty on February 17, 2025, in orders dated February 12, 2025); Tr. at 41 (testifying that he had access to his personal e-mail account while on active duty).

The Individual was required to disclose his arrest to the LSO within three working days of the event. DOE Order 472.2A at ¶ 4(w)(5), Att. 5 (Jun. 10, 2022); *see also* Ex. 9 (Security Acknowledgement signed by the Individual in 2023 wherein he indicated that he understood that he was required to report “all arrests[and] charges” to DOE “within 3 working days”); Security Executive Agent Directive 3 at ¶ H(2)(c) (requiring disclosure of arrests). On February 17, 2025, the Individual sent an e-mail to a DOE employee in the same DOE departmental element in which he was employed indicating that he had been “charged yesterday . . . with criminal charges” based on “allegations . . . by a soon to be ex-girlfriend.” Ex. A at 4. According to the Individual, he understood the DOE employee to whom he sent the e-mail to be “the lead [p]ersonnel [s]ecurity [r]ep” for his departmental element based on meetings in which he had participated wherein the employee gave “briefs on [personnel security] metrics.” Tr. at 22, 55. He therefore believed that this person was an appropriate person to whom to disclose his arrest. *Id.* The DOE employee never responded to the Individual’s e-mail, and the Individual testified that he learned in approximately June 2025 that this was because the employee retired before the Individual sent the e-mail. *Id.* at 22, 37; *id.* at 37 (testifying that he thought “well, no wonder I never received any type of follow up back because [the employee was] usually very responsive”). The Individual claimed that he left a voice-mail for his supervisor regarding the charges in late February or early March of 2025, but I do not credit this claim because the Individual provided no evidence thereof and DOE submitted an e-mail from the LSO indicating that the Individual’s supervisor had no information as of April 23, 2025, concerning the matter to provide to the LSO. Tr. at 38–39; Ex. 6.

On March 26, 2025, the LSO issued an LOI to the Individual at his personal e-mail address and requested a response on or before March 31, 2025. Ex. 7 at 1; Ex. 8 at 1. The Individual did not respond to the LOI. The Individual testified that he had no recollection of receiving the LOI and noted that he was on active duty at the time it was sent to him. Tr. at 22, 45. The Individual had access to his personal e-mail account while on active duty. *Id.* at 41. The Individual received the

LSO's transmission of the SSC to his personal e-mail address – the same personal e-mail address to which the LSO's previous e-mails had been sent – in May 2025. *Id.* at 53–54.

D. Post-Arrest Interactions with Girlfriend & Dismissal of Charges

At some point following the Individual's arrest, the Girlfriend left his home and moved to another state. *Id.* at 33–34. According to the Individual, the Girlfriend took an "expensive" vehicle of his to the other state without his permission. *Id.* at 34. On March 20, 2025, the Individual attended a hearing related to the criminal charges. *Id.* at 32. Around that time, the Individual agreed to allow the Girlfriend to resume living with him and to attempt reconciliation after "she threaten[ed] that she was going to sell [his vehicle]," even though his "intent wasn't really [] to reconcile," because he "wanted [his] vehicle back[a]nd didn't want to take a hit on a loan." *Id.* at 34, 51; *see also id.* at 49–50 (testifying that she had "extort[ed] [him] for money" by "threaten[ing] [] to just ruin [his] career").

On April 28, 2025, all of the criminal charges against the Individual were dismissed, *nolle prosequi*, at the request of the prosecuting agency. Ex. K at 89–94. The Individual denied that he committed any of the alleged criminal conduct. Tr. at 24; *see also id.* at 30–31, 49 (denying that he engaged in any behaviors or recalled any incidents corresponding to the charges).

The Individual testified that he had last interacted with the Girlfriend the week of the hearing. *Id.* at 34. He further testified that their efforts at reconciliation "ha[d]n't worked out," that he had ended the relationship, and that she was "in the process of" moving to another state. *Id.* at 34, 55. The Individual indicated that he had spoken to the Girlfriend about "giving her money to drive back to [the other state]." *Id.* at 52. The Individual attributed his willingness to assist the Girlfriend, despite what he characterized as her false allegations, to compassion and a desire to help the Girlfriend deal with "addiction." *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.

In applying the mitigating conditions, I must consider factors set forth in Part 710, commonly referred to as the “whole-person concept.” 10 C.F.R. § 710.7(c). The Individual would have me assign substantial weight to his exemplary military service in applying the whole-person concept. I do not take lightly the Individual's achievements, which, by the account he offered at the hearing, have saved lives and significantly advanced the missions he has worked towards. However, while the Individual's military service provides evidence of his reliability and trustworthiness in that context, I believe that there are other elements of the whole-person concept that are more applicable to the allegations at issue under Guideline E. First, as indicated in the Adjudicative Guidelines, “failure without reasonable cause . . . to complet[e] security forms or releases” “will normally result in an unfavorable national security eligibility determination.” Adjudicative Guidelines at ¶ 15(a). Thus, the alleged conduct is very serious. 10 C.F.R. § 710.7(c) (requiring consideration of “the nature, extent, and seriousness of the conduct”). Moreover, considering the Individual's extensive history holding security clearances, he should have been well aware of the importance of prompt and thorough disclosure of derogatory information as well as the importance of making such disclosures through the proper channels. *Id.* (requiring consideration of the circumstances surrounding the conduct). Likewise, considering the Individual's age, maturity, and seniority in terms of his military rank, I would expect him to have better knowledge of and appreciation for procedures for reporting derogatory information in the security context than a younger, lower-ranking individual newer to Federal civilian or military service. *Id.* (requiring consideration of the “age and maturity of the individual at the time of the conduct”). As explained below, the application of the “whole-person concept” to the facts of this case heighten the doubts as to the Individual's judgment and reliability despite his positive military service history.

There is no indication that the Individual made any effort to correct his failure to respond to the LSO's e-mails and LOI concerning his alleged criminal conduct before being confronted for his failure to do so in the SSC. Accordingly, I find the first mitigating condition inapplicable to the Individual's failure to respond to the LSO's e-mails and LOI. Adjudicative Guidelines at ¶ 16(a).

While the Individual did make some effort to disclose his arrest within three days of the event, he has not brought forward any evidence to suggest that he did so to a person who was responsible for receiving such disclosures. Merely sending an e-mail to a person he knew from work presentations who had some responsibility for personnel security, without any inquiry or research into whether this was an appropriate person to receive his disclosure, was not a reasonable approach to carrying out his responsibilities as a security clearance holder. Moreover, it was unreasonable for the Individual not to follow-up regarding his disclosure when he received no confirmation or inquiries from the person to whom he made the disclosure. Considering the Individual's laissez-faire attitude towards carrying out his obligations to disclose his arrest, and his failure to make any effort to correct his inadequate reporting of the arrest through an inappropriate channel, I find the first mitigating condition inapplicable to his failure to properly report his arrest within three days as required by DOE Order 472.2A. *Id.*

The second mitigating condition is irrelevant to the facts of this case because the Individual does not allege that he relied on the advice of any person in attempting to disclose his arrest or failing to respond to the LSO. *Id.* at ¶ 16(b).

The Individual's failure to follow procedures for the disclosure of his arrest, failure to respond to the LSO's e-mails after it received the NCIC alert indicating that the Individual was "armed and dangerous," and failure to respond to the LOI prevented the LSO from being able to meaningfully assess the security concerns presented by the Individual's conduct and thus presented serious security concerns. These failures were recent as they occurred within six months of the hearing. While the Individual's arrest was an unusual event in his life, there is no indication that the relationship issues that precipitated the arrest, as discussed in more detail below, were unusual. Moreover, the Individual's failure to properly report his arrest or respond to the LSO occurred in the context of his ordinary efforts to balance his military and civilian responsibilities. It was the Individual's responsibility to appropriately monitor and respond to communications made to him through the e-mail accounts he used. Whether the Individual intentionally failed to respond to the communications or was not diligent in monitoring his communications due to his demanding duties is irrelevant; it was unreasonable for the Individual not to identify and respond to the LSO's communications which were critical to the adjudication of the security concerns presented by his alleged criminal conduct. Thus, I find that the events that precipitated the Guideline E concerns were not unusual.

The Individual's failure to report his arrest or respond to the LSO appear to be isolated events in the Individual's long career. However, I find that the infrequency of the Individual's conduct does not mitigate the security concerns. As previously discussed, the issuance of a warrant indicating that the Individual was armed and dangerous and his subsequent arrest for numerous violent crimes presented immediate concerns as to his judgment, reliability, and trustworthiness that required prompt and compliant action on the Individual's part. In this critical moment, the Individual failed to exercise the judgment and reliability that one would expect considering his experience, maturity, and rank. Moreover, the Adjudicative Guidelines are clear that failure to cooperate with security investigative processes "will normally result in an unfavorable national security eligibility determination." Considering these factors, I find the third mitigating condition does not resolve the security concerns presented by the Individual's conduct. *Id.* at ¶ 16(c).

The Individual has not fully accepted responsibility for his conduct, arguing that his attempted disclosure was a good-faith effort and attributing responsibility for his failure to respond to the numerous communications from the LSO to either not receiving or not noticing the e-mails. Nor has he pursued counseling of any kind. Accordingly, the fourth mitigating condition is inapplicable. *Id.* at ¶ 16(d).

The remaining mitigating conditions are irrelevant to the facts of this case because the LSO did not allege that the Individual's conduct placed him at special risk of exploitation, manipulation, or duress, the LSO's allegations were based on the LSO's own records rather than a source of questionable reliability, and the LSO did not allege that the Individual associated with persons involved in criminal activities. *Id.* at ¶ 16(e)–(g).

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

B. 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.

Before addressing the mitigating conditions, I will first consider aspects of the "whole-person concept" that I find particularly relevant to my analysis. First, as above, I credit the Individual for a career of exemplary military service. Within the controlled military environment, he has shown himself to be a reliable and trustworthy person whose conduct presents no cause for concern. However, the Individual's recent behavior in his civilian life raises substantial doubts as to his judgment and reliability. The Individual is a mature adult with a long history of possessing a security clearance who should have recognized long before his arrest that cohabitating with a woman who he claimed was unstable, violent, and abusing drugs could negatively affect his eligibility for access authorization. *See* 10 C.F.R. § 710.7(c) (requiring consideration of the "age and maturity" of the Individual). Despite the Girlfriend making what he claimed were false allegations that threatened his career, the Individual repeatedly reconciled with the Girlfriend and

resumed cohabitating with her. *See id.* (requiring consideration of “the likelihood of continuation and recurrence”). Further, he has admitted that he has effectively been extorted by her for money and a residence. *Id.* (requiring consideration of “the potential for pressure, coercion, exploitation, or duress”). Taken together, the positive evidence provided by the Individual’s military service is offset in the civilian environment by his repeated exercise of poor judgment.

Only about five months elapsed between the Individual’s February 2025 arrest and the hearing in connection with this matter. The passage of such a brief period of time since the Individual’s arrest sheds no light on the probability of recurrence. The Individual’s arrest was certainly an unusual event in his life, but I cannot conclude based on the evidence before me that the circumstances that led to his arrest were unusual. The Individual described a pattern of conflict with the Girlfriend and admitted that his second wife also initiated legal action against him related to conflict in their relationship. This testimony calls into question whether the allegations at issue in this proceeding were the product of unusual circumstances. I have no testimony from friends, family, or former romantic partners of the Individual who could corroborate that his personal relationships are not characterized by conflict or violence and that he demonstrates good judgment in his personal life. Absent affirmative evidence to support the Individual’s account, I cannot find that the circumstances that gave rise to the allegations of criminal conduct by the Individual were unusual. Therefore, the first mitigating condition is inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not assert that he was pressured or coerced to engage in unlawful conduct. *Id.* at ¶ 32(b).

The Individual denies that he committed any of the alleged criminal conduct, and the charges were dismissed at the discretion of the prosecuting agency. This could be because, as the Individual claims, the Girlfriend’s allegations were false and made in retaliation for the Individual threatening to end the relationship. It could also be that the Girlfriend decided to stop cooperating with the prosecuting agency when she and the Individual sought to reconcile and residing with the Individual provided her with financial benefits, and that the prosecution could not move forward without the Girlfriend’s cooperation. Other explanations for the prosecuting agency’s decision can be imagined, both favorable and unfavorable to the Individual. However, the Individual has not come forward with any information concerning the specifics of the Girlfriend’s allegations, information from law enforcement’s investigation of the allegations, or information regarding the events that led to the dismissal of the charges. Absent additional information, I cannot conclude that the third mitigating condition is applicable to the facts of this case. *Id.* at ¶ 32(c).

Most of the evidence that the Individual submitted concerning his positive employment record and education cannot establish rehabilitation because it occurred prior to his alleged criminal conduct and thus there was no criminal behavior from which to improve or rehabilitate when he engaged in the positive behaviors. *See Rehabilitation*, BLACK’S LAW DICTIONARY (9th ed. 2009) (defining rehabilitation as “the process of seeking to improve a criminal’s character and outlook so that he or she can function in society without committing other crimes”). The Individual’s recent undertaking of a PhD program certainly constitutes higher education that may provide evidence of rehabilitation. However, considering the poor judgment the Individual displayed in connection with his alleged criminal activity and continued poor judgment in allowing the Girlfriend to remain part of his life even after all of the events described above, I find that the “whole-person concept”

weighs against finding rehabilitation based on this limited evidence. Thus, I find the fourth mitigating condition inapplicable. Adjudicative Guidelines at ¶ 32(d).

For the aforementioned reasons, I find that none of the mitigating conditions are applicable to the facts of this case. Accordingly, I find that the Individual has not resolved the security concerns asserted 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 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 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