



to a letter of interrogatory (LOI) from the LSO, the Individual denied that he had committed any of the offenses he was charged with in connection with the alleged forcible rape. Ex. 12 at 66. He indicated that he had been ordered to “stay away from” the victim of the alleged forcible rape and that he was prohibited from owning a firearm until the year 2044. *Id.* at 70.

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 7–10. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines D and J of the Adjudicative Guidelines. *Id.* at 5–6.

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 fifteen exhibits (Ex. 1–15). The Individual did not submit any exhibits. The Individual testified on his own behalf. Transcript of Hearing, OHA Case No. PSH-25-0169 (Tr.) at 3, 8. The LSO did not call any witnesses to testify.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline D (Sexual Behavior) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5. Actions that may raise concerns under Guideline D include “[s]exual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual’s judgment, reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 12. The SSC cited the Individual’s alleged forcible rape of a woman and his having been charged with numerous offenses in connection with the alleged offense. Ex. 1 at 5. The LSO’s allegation that the Individual engaged in sexual behavior of a criminal nature justifies its invocation of Guideline D. Adjudicative Guidelines at ¶ 13(a).

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 5–6. “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 having been arrested and charged with seven criminal offenses in connection with his alleged forcible rape of a woman and multiple court orders having been issued prohibiting the Individual from having contact with the victim of the alleged forcible rape or owning a firearm until the year 2044. Ex. 1 at 5–6. The LSO’s allegations that the Individual engaged in criminal conduct justify 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 February 9, 2024, friends of the Individual threw a party at the Individual's home to celebrate the Individual's employment by a DOE contractor. Ex. 13 at 95. In statements to law enforcement, the Individual indicated that numerous persons who were unknown to him attended the party. *Id.* at 94. One of those was an eighteen-year-old woman (Jane Doe) who would accuse the Individual of having forcibly raped her. *Id.* at 84, 87; *see also* Ex. 15 at 127 (providing the Individual's birthdate which indicates that he was twenty-four at the time of the alleged conduct); Tr. at 21–22 (Individual testifying that he had not met Jane Doe prior to the party and did not learn her name at the party).

In statements to law enforcement officers, Jane Doe stated that a friend of hers (Friend 1) invited her to attend the Individual's party with him and that she and Friend 1 arrived at the Individual's party at approximately 9:30 PM. Ex. 13 at 100; *see also id.* at 101 (Jane Doe indicating in her statement to law enforcement officers that she believed that the home in question was the residence of a man other than the Individual); *id.* at 85 (indicating in police records that the man who Jane Doe believed resided at the home in fact resided at a different address); Tr. at 65 (Individual testifying that he did not know Friend 1). Jane Doe represented to law enforcement officers that she consumed two shots of liquor while at the party and did not become intoxicated. Ex. 13 at 87, 95, 101. However, the Individual and a female attendee of the party who knew Jane Doe (Friend 2), but who was not known by the Individual, both reported that Jane Doe was visibly intoxicated. *Id.* at 103 (Individual stating to law enforcement officers that Jane Doe was "swaying and stumbling" at the party and that she had "a hard time coming up the stairs [to his residence] with her friends"); *id.* at 105–06 (Friend 2 stating to law enforcement that Jane Doe was "slurring her words" and that Friend 2 had tried to convince Jane Doe to leave the party before the alleged

forcible rape due to Jane Doe's intoxication); Tr. at 65 (Individual testifying that he did not know Friend 2). Considering that there is no indication in the record that Friend 2 had any reason to provide inaccurate information to law enforcement, I find Friend 2's account to law enforcement highly creditable. Moreover, considering that the Individual's statement to law enforcement that Jane Doe was significantly intoxicated may have been against his own interest, I find the Individual's account of Jane Doe's intoxication likely to be reliable. For these reasons, I conclude that Jane Doe was intoxicated prior to the alleged forcible rape.

According to both the Individual and Friend 2, Jane Doe kissed the Individual prior to the alleged forcible rape. Ex. 13 at 98, 106. The Individual additionally asserted to law enforcement officers that Jane Doe "kept pushing him into the master bedroom" with the intention of having sexual intercourse. *Id.* at 98. Jane Doe asserted to law enforcement officers that the perpetrator of the alleged forcible rape had tried to kiss her neck while socializing with her and that she had told him to stop. *Id.* at 101. Again, I find Friend 2's account of the events that transpired likely to be reliable and credit her account that Jane Doe voluntarily kissed the Individual on her own initiative.

At some point in the late evening of February 9th or early morning of February 10th, Friend 2 attempted to convince Jane Doe to leave the party due to Jane Doe's intoxication. *Id.* at 106. Jane Doe refused, and the Individual encouraged Friend 2 and one of his friends to test drive his performance vehicle. *Id.*; Tr. at 43. Friend 2 invited Jane Doe to accompany her on the test drive, but Jane Doe refused. Ex. 13 at 105–06. Friend 2 decided to participate in the test drive of the Individual's vehicle and urged Friend 1 to "watch [Jane Doe], as she didn't trust [the Individual] and the other guys [at the party] with [Jane Doe]." *Id.* at 105.

According to Jane Doe, in the early morning hours of February 10th, she was fixing herself a drink in the kitchen of the residence at which the party was being held while the other attendees were outside when a man approached her. *Id.* at 87. Jane Doe alleged that he invited her to join him in the bedroom and that, when she declined, he picked her up and carried her over his shoulder to the bedroom against her will. *Id.* Jane Doe alleged that the assailant placed his hands over her nose and mouth to keep her quiet, removed his pants, and vaginally raped her while choking her. *Id.* at 87, 95, 101. Jane Doe told law enforcement officers in multiple interviews that she had screamed and scratched the assailant's face during the assault. *Id.*

In her initial interview with law enforcement officers on the morning of February 10, 2024, Jane Doe represented that the assault by the assailant ended when Friend 1 and Friend 2 "pull[ed] [the assailant] off of her and took her back to her parent's house." *Id.* at 87. During a later interview with law enforcement officers, Jane Doe offered a differing account wherein she asserted that Friend 1 and Friend 2 entered the bedroom during the assault, Jane Doe "told them not to leave as they were about to walk out," and the assailant "got off from being on top of her" and allowed her to leave. *Id.* at 102; *see also* Tr. at 24 (Individual testifying at the hearing that Friend 1 and Friend 2 "barged in" while he and Jane Doe were having sexual intercourse). Friend 1 told law enforcement officers that he entered the bedroom with Friend 2 to try to find Jane Doe to give her a ride home and observed that Jane Doe and the alleged assailant were unclothed. Ex. 13 at 104–05. Friend 1 asserted that after he asked Jane Doe "are you good?" that Jane Doe began crying, entered a bathroom with Friend 1 and Friend 2, and said "she was touched." *Id.* Friend 1 stated to law enforcement that he thought "she said the word raped . . . ." *Id.* at 105. Friend 2 said that Jane

Doe “had almost no clothes” on when Friend 2 entered the bedroom and that Jane Doe told her that she had been raped after entering the bathroom with Friend 2. *Id.* at 105–06.

Friend 1 and Friend 2 took Jane Doe home, after which Jane Doe’s parents took her to a hospital. *Id.* at 87. Jane Doe told medical personnel that she had been raped and was medically evaluated, but no information concerning the findings of the evaluation are present in the record. *Id.* at 87, 97. At approximately 6:30 AM on February 10th, law enforcement officers arrived at the hospital and interviewed Jane Doe. *Id.* at 87, 95. According to records prepared by one law enforcement officer, he “did not observe any signs of struggle or defensive marks on [Jane Doe].” *Id.* at 87. During the interview, Jane Doe identified the assailant as a man with the same first name as the Individual and a surname which shared numerous letters with the Individual’s. *Id.* Jane Doe showed the officers a picture of the man she believed to be the assailant from a social media site.<sup>3</sup> *Id.*

At some point on February 10, 2024, law enforcement officers questioned the Individual about the man Jane Doe had identified as the perpetrator of the forcible rape. *Id.* at 102. During the course of questioning the Individual, the officers observed that the Individual matched Jane Doe’s physical description of the assailant. *Id.* However, the officers did not “see visible marks on his face” corresponding to Jane Doe’s account of having scratched the face of the assailant. *Id.*

Law enforcement officers visited the Individual’s residence on the morning of February 10th to investigate the alleged forcible rape. *Id.* at 87. The Individual allowed the officers to search and photograph the residence, allowed them to seize the bedding from the bedroom where the forcible rape allegedly occurred, and voluntarily provided a DNA swab. *Id.* at 87–88, 94. The Individual and four other attendees of the party who were still present when the officers arrived denied knowledge of a forcible rape occurring at the party or of having heard “any screaming or anything out of the ordinary” during the night. *Id.* at 87. At some point, the officers indicated that they were looking for the person identified by name by Jane Doe as the assailant. *Id.* at 102; Tr. at 18. The Individual and the other four persons present denied knowledge of the person identified by Jane Doe having been present at the party. Ex. 13 at 95, 102.

On the afternoon of February 10th, a law enforcement officer confronted the Individual with the information that his physical appearance and clothing matched Jane Doe’s description of the assailant. *Id.* at 98, 102. Upon being confronted with this information, the Individual said “don’t get me wrong, we came in here” with reference to the bedroom in which the forcible rape allegedly occurred. *Id.* at 98. He also corroborated that Jane Doe left the bedroom after Friend 1 and Friend 2 entered. *Id.* However, he initially denied recollection of whether he and Jane Doe had sexual intercourse. *Id.*; *see also* Tr. at 31 (testifying at the hearing that he had lied to law enforcement officers about not remembering having sexual intercourse with Jane Doe because it “was [his] first time . . . dealing with the police . . . and [he] didn’t . . . know what to do”). After being confronted with the information that Jane Doe had undergone a medical examination and had been swabbed for DNA, the Individual “change[d] his statement[.]” and admitted that he and Jane Doe had sexual intercourse during the party, which he characterized as voluntary and initiated by Jane Doe. Ex.

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<sup>3</sup> As the police report indicates that Jane Doe showed the officers a photo of the assailant “from his [] social media account,” and Jane Doe identified the assailant as a man other than the Individual, I find that Jane Doe showed the officers a photo of the other man and not the Individual. Ex. 13 at 87.

13 at 98; *but see* Tr. at 31–32 (claiming that he admitted to remembering having sexual intercourse with Jane Doe after speaking with family members who urged him to be truthful). The Individual denied having “strangl[ed] or suffocate[ed]” Jane Doe, and asserted that if she had screamed for help that the other attendees at the party would have heard her do so. Ex. 13 at 104.

The Individual was arrested and charged with seven offenses in connection with the alleged forcible rape. *Id.* at 104; Ex. 11 at 63. The charges were dismissed, without prejudice, at the request of the prosecuting agency in March 2024. Ex. 8 at 41.

On February 29, 2024, a court, based on a finding that there was probable cause “that an act of domestic abuse [] occurred,” issued a temporary order of protection prohibiting the Individual from contacting Jane Doe by any means. Ex. 9 at 45–49. Following a hearing, a second order of protection was issued against the Individual in favor of Jane Doe on April 24, 2024. Ex. 15 at 174–75; *see also id.* 163–64 (Individual telling an investigator during a background investigation of his eligibility for access authorization that he believed that Jane Doe sought the second order of protection because she believed he “would retaliate against her” and that he had complied with the order); Tr. at 55–57, 63 (Individual testifying that he attended a hearing concerning the order of protection sought by Jane Doe). According to the Individual, he did not contest the order of protection because he “just wanted it to be over . . . .” Tr. at 64. In a December 2024 response to the LOI issued by the LSO, the Individual stated that he was required to “stay away from [Jane Doe] and can’t own a firearm until 2044.” Ex. 12 at 70.

The Individual testified at the hearing that he did not sexually assault Jane Doe and had not ever sexually assaulted or inappropriately touched anyone without their consent. Tr. at 16–17. The Individual testified that he had initially rejected Jane Doe’s sexual advances and “tr[ie]d to brush her off.” *Id.* at 29–30 He theorized that Jane Doe was motivated to falsely accuse him of forcibly raping her because he had initially rejected her advances. *Id.* at 66–67. The Individual stated that he believed he had exercised poor judgment in allowing strangers into his home during the party and having sexual intercourse with a stranger. *Id.* at 44, 46. According to the Individual, he no longer attends parties or consumes alcohol and spends time with his girlfriend and children when he is not at work. *Id.* at 48–49.

At the hearing, the Individual denied that Jane Doe’s speech was slurred, that she was having difficulty walking, or that she appeared intoxicated on the night of the party prior to him having sexual intercourse with her. *Id.* at 36–37, 43. When asked about why he had told law enforcement officers that he believed that Jane Doe was intoxicated when she arrived at his residence and during the party, he claimed that he had thought that her loud, boisterous behavior was “how she normally was” and that statements to law enforcement about seeing her “staggering” referred to her missing a step entering his residence which he claimed “quite a few” other attendees had done. *Id.* at 67–68.

## V. ANALYSIS

### **A. Guideline D**

Conditions that could mitigate security concerns under Guideline D include:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress;
- (d) the sexual behavior is strictly private, consensual, and discreet; and
- (e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Adjudicative Guidelines at ¶ 14.

The Individual claims that he and Jane Doe had consensual sexual intercourse and that her allegations of forcible rape were false. If I accepted the Individual's assertions, then there would be no basis to the LSO's allegations under Guideline D. There are certainly indications in the record that Jane Doe was an unreliable source of information and likely embellished the truth. Most notably, Jane Doe initially provided a false report to law enforcement that Friend 1 and Friend 2 pulled the assailant off of her during the course of the rape before modifying her account, the Individual did not have scratches on his face consistent with Jane Doe's allegation of having scratched the face of her assailant, law enforcement officers did not observe any defensive marks on Jane Doe, and Jane Doe's claim of having been carried across the residence on the assailant's shoulder while screaming and resisting without any partygoers observing is dubious. Moreover, Friend 2's account to law enforcement corroborates the Individual's claim that Jane Doe initiated the sexual encounter.

However, there are several considerations that weigh against such a conclusion. There is no indication in the record that Jane Doe had any reason to falsely accuse the Individual of rape. The Individual's speculation that Jane Doe became upset when he resisted her advances and responded to that frustration and disappointment by inducing him into a sexual encounter only to then falsely accuse him of rape seems farfetched. Additionally, the Individual has also been untruthful in several aspects of his account of the event. He lied to law enforcement about not recalling having a sexual encounter with Jane Doe, only to admit that the sexual intercourse occurred after learning that DNA evidence was being collected from Jane Doe. Additionally, although he admitted to law enforcement officers that Jane Doe was visibly intoxicated prior to the sexual encounter, he unconvincingly attempted to retract that claim during his hearing testimony. Furthermore, Jane

Doe provided sufficient evidence to convince a judge that there was probable cause that some form of domestic violence occurred during the encounter such that the judge issued an order of protection against the Individual.

It may very well be the case that the Individual is the unfortunate victim of false accusations. However, even accepting that Jane Doe embellished the truth, it also may be the case that Jane Doe withdrew her consent to the sexual encounter after she and the Individual entered the bedroom or that she was too intoxicated to consent to the encounter in the first place. In evaluating the security concerns, I consider that the Individual's decision to have sexual intercourse with a stranger who was showing obvious physical signs of significant intoxication was an exercise of poor judgment. *See* 10 C.F.R. § 710.7(c) (requiring consideration of the "circumstances surrounding the conduct" in applying the Adjudicative Guidelines). I also note that forcible rape is an extremely serious alleged offense and find that the Individual's untruthfulness to law enforcement and attempt to recant his prior statements regarding Jane Doe's intoxication are significant to the weighing of the evidence in this case. *Id.* (requiring consideration of the "seriousness of the conduct" and "other relevant and material factors"). As indicated above, I must draw all inferences in favor of national security. *Supra* p. 3. While I am not convinced that the Individual committed the alleged forcible rape, there is sufficient evidence in the record to present a security concern under Guideline D.

The first, third, fourth, and fifth mitigating conditions are irrelevant to the facts of this case because the Individual was an adult when he allegedly committed the offense, the LSO has not alleged that the Individual engaged in sexual behavior of a sort that would place him at risk of coercion, exploitation, or duress, an alleged forcible rape is by definition not consensual, and the Individual does not claim to have pursued treatment related to sexual behavior. Adjudicative Guidelines at ¶ 14(a), (c)–(e).

Turning to the second mitigating condition, the alleged conduct did not occur long ago. While it was certainly an unusual event in the Individual's life to be charged with forcible rape, he has brought forward no witness testimony from persons sufficiently familiar with his life to establish whether it was unusual for the Individual to allegedly pursue nonconsensual sexual intercourse. Furthermore, while the Individual claims he no longer attends parties or consumes alcohol, he has brought forward no witness testimony to corroborate that it was an unusual circumstance for him to pursue sexual intercourse with a heavily intoxicated woman at a party. Absent any evidence from the Individual besides his own testimony, and considering the seriousness of the alleged criminal conduct, I find that the Individual has not established the applicability of the second mitigating condition. *Id.* at ¶ 14(b).

Having concluded that none of the mitigating conditions apply in this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline D.

#### **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's alleged criminal conduct did not occur so long ago that the passage of time alone is sufficient to convince me that it will not recur and, for the same reasons described under the Guideline D analysis, I find that the Individual has not brought forward evidence that the alleged offense occurred under unusual circumstances. Thus, 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 claim that he was pressured or coerced into committing criminal conduct. *Id.* at ¶ 32(b).

As described above, I am by no means convinced that the Individual committed the alleged offense. However, the Individual did himself no favors in failing to produce the testimony of any witnesses who were present at the party or familiar with the Individual's behavior who could corroborate his testimony. Self-serving testimony from the Individual, without any support, is simply insufficient to carry his burden. Considering that the LSO presented enough evidence to establish a security concern, and that I must resolve *any* doubt in favor of national security, I find the third mitigating condition inapplicable. *Id.* at ¶ 32(c).

The Individual did not bring forward any evidence of rehabilitation. While he claims to have complied with the order of protection, this behavior alone is not sufficient to establish rehabilitation considering the recency and seriousness of the Individual's alleged criminal conduct. Thus, the fourth mitigating condition is inapplicable. *Id.* at ¶ 32(d).

For the aforementioned reasons, 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 D 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 should not be granted access authorization. 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