

***The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.**

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: December 3, 2025) Case No.: PSH-26-0022
)
)
_____)

Issued: June 4, 2026

Administrative Judge Decision

James P. Thompson III, 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.”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 is employed by a DOE contractor in a position that requires a security clearance. The DOE Local Security Office (LSO) received a report that in June 2025 the Individual had been arrested and charged with Indecency with a Child, Sexual Contact. Based on that information and the allegations supporting the charges, the LSO informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline D and Guideline J of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. 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 Individual testified on his own behalf and presented the testimony of

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.

his girlfriend, his counselor, his friend, and the criminal defense attorney who represented him in the proceeding related to the Indecency with a Child charge. *See* Transcript of Hearing, OHA Case No. PSH-26-0022 (Tr.). The Individual submitted one exhibit, marked Exhibit A. The LSO submitted twenty-one exhibits, marked Exhibits 1 through 21.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline D (Sexual Behavior) and Guideline J (Criminal Conduct) as the bases for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 6.

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. Conditions that could raise a security concern include “sexual behavior of a criminal nature, whether or not the individual has been prosecuted[.]” *Id.* at ¶ 13(a). The SSC cited the Individual’s arrest and felony charge with Indecency with a Child, Sexual Contact, which justifies the LSO’s invocation of Guideline D. Ex. 1 at 6.

Guideline J provides that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted” *Id.* at ¶ 31(b). The SSC cited the above information regarding his felony arrest and charge, in addition to the following information. In January 2018, the Individual was charged with and later pled guilty to Driving While Intoxicated (DWI). Ex. 1 at 6. In 2005, the Individual was charged with and sentenced to six months’ probation and a fine for Public Intoxication. *Id.* The cited information justifies the LSO’s invocation of Guideline J.

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 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

² References to the LSO exhibits are to the exhibit number and the page number of the combined .pdf of the exhibit book.

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 or her 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual has a daughter with his ex-wife, and he and the ex-wife have not been in a relationship since 2015. Tr. at 122. At the time the charges arose, the daughter was twelve years old. *Id.* at 123. The record reflects that the Individual was charged with two counts of Indecency with Child, Sexual Contact—both second-degree felonies. *Id.* at 11; Ex. 7 at 8 (Incident Report). Ultimately, the criminal case went to a jury trial in February 2026 and the Individual was acquitted of all charges. Tr. at 18; Ex. A (Judgment of Acquittal by Jury). Immediately afterward, he successfully had the prosecution records expunged. Tr. at 18–19 (defense attorney testifying that the record of the Individual’s prosecution was deleted from the state’s criminal information systems and other agency databases). The defense attorney explained that as a result of the expungement, the Individual was unable to obtain a copy of the trial transcript prior to the present hearing, and the Individual therefore requested that his defense attorney appear at the hearing to testify regarding what occurred during the criminal proceedings and at trial. *Id.* at 19. The defense attorney confirmed that, at the time of the hearing, she no longer represented the Individual, he was therefore no longer her client, and she was participating as a witness without being compensated for her testimony. *Id.* at 49.

The criminal charges stemmed from two separate incidents involving the Individual’s daughter. *Id.* at 13, 21. The first count alleged that the Individual intentionally and knowingly touched his daughter’s genitals for the purpose of sexual gratification. *Id.* at 21. According to the defense attorney, the daughter testified at trial³ that after she took a shower, the Individual touched her underwear and told her she needed to dry better to prevent an infection. *Id.* at 23–24. The Individual recalled pointing to her wet underwear and advising her to dry better to avoid an infection, but denied touching her. *Id.* at 119. At trial, the daughter described the contact as occurring in a “split second” and never stated it was sexual in nature. *Id.* at 23–24.

The second count alleged that the Individual intentionally or knowingly touched his daughter’s breasts for the purpose of sexual gratification. *Id.* at 21. According to the defense attorney, the

³ The daughter did not testify at the hearing. Unless otherwise indicated, all trial testimony is being recounted by the defense attorney.

daughter testified at trial that her father entered her bedroom while she was changing into a sports bra with her back to the door, wrapped his arms around her to hug her, kissed her head, and told her to hurry up. *Id.* at 24–25. She testified that only his forearms touched her breasts and did not claim the contact was sexual. *Id.* at 25–26. She also testified that she had long hair at the time, and the Individual could not have known her sports bra was not fully on. *Id.* at 120. At the hearing, the Individual similarly testified that he had no idea his daughter’s sports bra was not completely on when he hugged her. *Id.*

During the trial, the defense attorney asked the daughter about her opinion of the Individual. *Id.* at 26. In response, the daughter provided positive statements; however, she expressed concern that he did not respect her growing need for privacy. *Id.*

The defense attorney testified that throughout the trial the daughter did not seem to understand that the Individual was being accused of a sexual crime. *Id.* at 50. Instead, she viewed his behavior as “exceeding boundaries,” a conclusion the defense attorney reached based on the daughter’s denial at trial that the Individual had ever done anything “sexual” towards her. *Id.* The defense attorney recounted the following regarding the daughter’s testimony:

[S]he didn’t feel like her dad understood that she needed more privacy, that she was older and that she needed to have more – you know, more privacy and more sort of autonomy away from him, and she didn’t think that he got it, and she thought he would be upset with her or mad at her if she told him, and that she thought he would be mad at her because she – because of the whole trial happening.

Id. at 27.

The defense attorney testified that law enforcement learned the above allegations not from the daughter or the ex-wife, but via referrals initiated by the ex-wife’s attorney. *Id.* at 34. The defense attorney concluded after reviewing “documents and recordings” that the daughter initially described her version of the Individual’s conduct and her privacy concerns to the ex-wife. *Id.* at 31. During a recorded phone conversation, as recounted by the defense attorney, the ex-wife conveyed these privacy concerns to the Individual while they were arguing about a different subject. *Id.* Specifically, the ex-wife told the Individual that the daughter needs more space and that he “need[s] to respect her, [he] need[s] to give her more space, you know, she’s becoming a young lady . . .” *Id.* at 32. The Individual responded by becoming defensive and arguing that he had been giving his daughter sufficient independence. *Id.* The defense attorney then recounted that the ex-wife, in response, stated, “well, you touched her, you touched her after she came out of the shower, you touched her vagina, and you said she needed to wash better, and you don’t need to be doing that.” *Id.* at 37. The Individual responded by stating “you’re making it sound like I’m a pedophile, is that what you think, [], do you think I’m a – frickin’ pedophile.” *Id.* And the ex-wife then responded “no, I’m not accusing you of that, I’m saying you need to learn boundaries.” *Id.* Their phone conversation ended without resolving the argument. *Id.* at 32. The recording of the conversation is not in the record.

A few days later, the Individual went to the ex-wife’s home to retrieve his daughter for a scheduled visitation. *Id.* at 33. The ex-wife refused to allow the visit, prompting the Individual to contact

police in order to enforce the custody order. *Id.* In describing her review of police body camera video footage, the defense attorney testified that when the officers arrived, they spoke with the daughter and the ex-wife, and they informed the ex-wife that she could be held in contempt of court for refusing the visit. *Id.* In response, the ex-wife stated “well, then I want to press charges . . . because [the Individual] touched my daughter.” *Id.* The officers determined the alleged incident occurred in another jurisdiction, advised her to report it to the proper authorities, and left. *Id.* at 34. The bodycam footage is not in the record. The defense attorney did not describe what, if anything, the daughter said to police.

The defense attorney asserted that the ex-wife never filed a police report but informed her attorney of the situation. *Id.* The defense attorney explained that because there was an allegation of potential sexual abuse, the ex-wife’s attorney was obliged to contact Child Protective Services (CPS). *Id.* CPS then contacted the police department to participate in the forensic interview of the daughter, which resulted in a criminal indictment.⁴ *Id.* at 22, 31–34. The defense attorney also testified that the daughter provided a recorded pretrial interview, and she stated that the daughter’s trial testimony was consistent with both the pretrial interview and forensic interview. *Id.* at 22–23. At trial, the ex-wife denied making the allegations only after being warned about contempt; however, the responding police officer impeached her testimony, confirming that she only made the allegation after contempt was discussed. *Id.* at 38. The defense attorney also testified that the detective who investigated the case testified at the trial, but she did not describe the content of the detective’s testimony. *Id.*

The Individual has consistently maintained his innocence. *Id.* at 13 (defense attorney testifying that the Individual rejected all plea deals because he “could not plead to anything that’s not true”), 47–48, 60 (girlfriend testifying the Individual never wavered in his desire to prove his innocence), 68 (friend testifying to the same), 99–100 (counselor testifying to the same).

During the pendency of the charges, the Individual met with a counselor specializing in treating sex offenders and victims to help the Individual through all of the emotions that come with being accused of a sexual abuse crime. *Id.* at 87, 91 (counselor testifying that they had met approximately ten times and that the counseling is ongoing). The Individual testified that he has gained a better understanding of the physical, emotional, and psychological changes children undergo as they transition from prepubescence to adolescence, and the importance of setting healthy boundaries. *Id.* at 107. Through counseling, he learned to recognize that, while he was acquitted of the charges, he contributed to the situation by not fully understanding his daughter’s developmental need for more privacy. *Id.* at 108; *see also id.* at 95 (counselor confirming that the Individual recognized the need to interact with his daughter in a way that is sensitive to her developmental stage).

During the criminal proceedings, the Individual was barred from exercising his visitation rights. *Id.* at 49. He and his daughter went a year without contact. *Id.* at 50. Since his acquittal, they have been working toward “therapeutic visitation.” *Id.* at 49–50. According to the counselor, the Individual is focused on reuniting his family in a healthy way, recognizing that it will be a process. *Id.* at 94–95.

⁴ An indictment is “the formal written accusation of a crime, made by a grand jury and presented to a court for prosecution against the accused person.” *Indictment*, *Black’s Law Dictionary* (7th ed. 1999).

According to the Individual's friend, a work colleague and president of their union, the Individual's employer placed him on administrative leave and reassigned him during the criminal proceedings. *Id.* at 67, 74–75. Typically, the employer only guarantees thirty days of paid administrative leave, but they made an exception for additional time to allow the Individual to resolve the charges due to his positive workplace reputation and strong supervisory support. *Id.* at 75.

At the hearing, the Individual's current girlfriend testified that the Individual is "very protective of his children[,] he is a "great dad[,] and he routinely arranged his work schedule to attend his children's sporting events and maximize his time with them. *Id.* at 56–58; *see also id.* at 70–71 (Individual's friend describing the significant effort the Individual makes to spend time with his children).

Lastly, the Individual confirmed that his only other issues with law enforcement were the two prior offenses listed in the SSC: Public Intoxication in 2005 and DWI in 2018. *Id.* at 116 (Individual also confirming that a psychological evaluation following his DWI determined he did not have an alcohol use disorder). He spent one night in jail for the Public Intoxication offense and successfully completed his probation for the DWI before the end of that year. Ex. 18 at 130–31.

V. ANALYSIS

Based on the foregoing analysis and the entire record in this proceeding, I find that the Individual has failed to carry his burden to resolve the Guideline J and Guideline D concerns in this case.

A. Guideline J Considerations

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (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.

This Decision comes down to whether the Individual presented sufficient evidence to demonstrate there is no reliable evidence he engaged in the alleged criminal conduct in 2025 since he has

consistently denied doing so. As such, ¶ 32(c) is the only mitigating factor that may be applicable to resolve the Guideline J concerns stemming from his recent criminal conduct since he did not present evidence to establish the applicability of the remaining factors, as explained further below.

After reviewing the entire record, I conclude that there is reliable evidence to support that the Individual committed the criminal offenses. First, there is no dispute the Individual was indicted for two counts of Indecency with a Child, Sexual Contact, after law enforcement investigated the allegations. Consequently, a grand jury determined that there was sufficient evidence in order to support the Individual standing trial. Furthermore, at trial the detective who investigated the allegations testified in an effort to demonstrate the Individual committed the alleged criminal acts. Clearly, there is sufficient evidence that the Individual committed the alleged criminal acts, given that law enforcement received information that a crime had been committed, conducted an investigation into the same, obtained an indictment based on the evidence gathered during the investigation, and conducted a criminal prosecution trial involving the same.

In order to rebut the strength of that evidence and the allegations of the ex-wife, the Individual has put forward the uncorroborated testimony of his defense attorney. The defense attorney testified to her recollection of the daughter's testimony, but the record does not include a transcript or any other written or recorded statements of the daughter or other corroborating account of what the daughter testified to at trial. Furthermore, the attorney referenced reviewing specific relevant information to prepare for the trial that could have been submitted as evidence at this hearing, including a prehearing interview of the daughter, a forensic interview of the daughter by CPS, recorded conversations between the ex-wife and the Individual, and police body camera footage. But none of that evidence made it into the present record. The only corroborating evidence submitted by the Individual, besides the Individual's own testimony, is the record of acquittal. However, the acquittal, while relevant, does not *ipso facto* require that I find the Guideline J security concerns resolved. The standard for finding criminal guilt is far higher than determining whether there is reliable evidence under Part 710 that that the Individual committed a criminal act. To the extent there is an absence in the record of the above information, it is the Individual who bore the burden to bring forth such evidence to mitigate the concerns raised in this proceeding. And the defense attorney established that such evidence exists—she based a lot of her testimony on her recollection of it. Therefore, there is a concerning absence of corroborating evidence to establish that the Individual did not commit the acts that precipitated the indictment.⁵

In reaching my conclusion, I have considered the assertion that the prosecution stemmed from the allegations of his ex-wife. Even if it is true that she made them when confronted with the risk of contempt, that does not erase the fact that they were made. Furthermore, accepting the defense attorney's account that the ex-wife's attorney contacted CPS, that too demonstrates that that attorney felt obligated to contact authorities after hearing the allegations in whatever form they took. Accordingly, I conclude that the Individual has failed to carry his burden to establish the applicability of ¶ 32(c).

⁵ I accept that it has been difficult to obtain the transcript ahead of the hearing given the expungement. However, that explanation does not extend to the other information the defense attorney asserted that she reviewed and which both she and the Individual must have had access to during the pendency of and throughout the trial.

Paragraph 32(a) does not apply because the Individual's recent alleged conduct occurred less than a year before the present hearing and was therefore too recent to be resolved by the passage of time—even if he accepted responsibility for his conduct—and the Individual did not assert there were unusual circumstances that indicate the behavior is unlikely to recur because he denied ever engaging in criminal behavior. Paragraph 32(b) does not apply because there is no evidence that the Individual was pressured or coerced into committing the alleged criminal conduct. And ¶ 32(d) does not apply because there is no evidence of successful rehabilitation for the reasons stated above and because the Individual has not demonstrated that the treatment he receives from his counselor is directed at addressing the alleged criminal behavior that precipitated the security concerns.

Regarding his past alcohol-related criminal charges, I find the security concerns resolved under ¶ 32(a). The Individual has not engaged in alcohol-related criminal conduct since 2018, representing a significant passage of time without recurrence. Furthermore, he complied fully with all court-ordered sanctions at the time of those offenses. I therefore conclude that the Individual's past alcohol-related criminal conduct is unlikely to recur and those two charges do not cast doubt on the Individual's reliability, trustworthiness, or good judgment.

Given that the Individual has not resolved the concerns that stem from his recent indictment, I conclude that the Individual has not resolved the Guideline J security concerns.

B. Guideline D Considerations

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (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 Guideline at ¶ 14.

Given my above findings under Guideline J, I conclude that the Guideline D security concerns are not resolved. Paragraph 14(a) is patently inapplicable. Paragraph 14(b) does not apply to resolve the concerns because, above, I concluded that the alleged behavior occurred relatively recently and there is no evidence from which to conclude it occurred under unusual circumstances.

Furthermore, given the severity of the alleged conduct, I do not conclude that the alleged infrequency weighs in favor of resolving the security concerns. I also conclude that ¶ 14(c) and (d) are inapplicable because the security concerns are not based on the likelihood of coercion, exploitation, or duress; nor are they based on behavior that was strictly private, consensual, and discreet. Lastly, ¶ 14(e) does not apply because the Individual has neither admitted to his behavior nor demonstrated that the treatment he receives from his counselor is directed at addressing the alleged criminal behavior that precipitated the security concerns.

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 Guideline D 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 of the testimony and other evidence presented at the hearing, I conclude that the Individual has not brought forth sufficient evidence to resolve the security concerns. 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals