

the purview of Guidelines E (Personal Conduct), Guideline I (Psychological Conditions and Guideline J (Criminal Conduct) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual testified on his own behalf and offered the testimony of a friend (Friend) and a police officer (Officer). The DOE Counsel presented the testimony of the DOE Psychiatrist. The DOE submitted seven exhibits (Exhibits 1-7) into the record, and the individual tendered 13 exhibits (Exhibits A-H, J-N, P). The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require 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 determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines E, I, and J of the Adjudicative Guidelines. In citing Guideline E, the LSO referenced an incident where the individual provided financial assistance to a woman with whom he subsequently had a romantic relationship. The woman took pictures of the

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

individual while he was disrobed and tied to a chair. Later the woman threatened to publically reveal the pictures unless she received money. Despite this incident, the individual continued to maintain contact with the woman and to provide her with financial assistance. Also cited as Guideline E derogatory information was the fact that the individual had given the woman some \$20,000 over the course of their relationship despite having credit card debt of approximately \$60,000.

The LSO cited as Guideline I derogatory information a report authored by the DOE Psychiatrist regarding the individual's psychological condition. In his May 2017 report (Report), the DOE Psychiatrist determined that the individual had demonstrated severely impaired judgment in several areas of his life, and that this impaired judgment would likely occur in the future. Specifically, the DOE Psychiatrist cited the individual's involvement with a woman half his age in an attempt to reform the woman's life despite the fact he had no professional training in that regard. The DOE Psychiatrist also cited the individual's 2015 citation for Public Intoxication and Disorderly Conduct when he threatened another individual with a tire iron. The individual's impaired judgment resulted from an obsessive-compulsive personality trait that is long-standing in nature and is likely to persist. The DOE Psychiatrist also opined that the individual may continue to exhibit impaired judgment even if he received mental health treatment. With regard to Guideline J, the LSO also cited a 2015 arrest of the individual for Public Intoxication and Disorderly Conduct, and an arrest in 2009 for Simple Assault against his then-spouse (Ex-Spouse).

I have reviewed the exhibits in this case and find that the LSO had sufficient grounds to invoke Guidelines E, I, and J in this case.

IV. Findings of Facts

The individual does not essentially dispute the factual allegations in the Notification Letter.

In May 2008, the individual's Ex-Spouse filed a report with local police alleging that she had engaged in a verbal argument with the individual where he had pushed her into a bathroom wall, slapped her face and broke her glasses. In January 2009, the Ex-Spouse reported that the individual had pushed her against a kitchen cabinet and yelled verbal threats against her. Ex. 5 at 78-79. In March 2009, the individual was arrested for Simple Assault and Harassment against his Ex-Spouse. Ex. 5 at 78-79; Ex. 7. The individual engaged in an argument with his Ex-Spouse which resulted in the Ex-Spouse being pushed to the ground and hit by the individual. Ex. 7. The Ex-Spouse suffered minor injuries as a result of the altercation. Ex. 7 at 17. As a result of this incident, a temporary protective order was issued by a local court. Ex. 7 at 15. The individual was also ordered to attend a 24-session anger management course. Ex. 5 at 84-85.

In March 2015, the individual was arrested for Disorderly Conduct and Public Intoxication, and was incarcerated overnight. Ex. 5 at 29-48; Ex. 6. The arrest resulted from an incident where the individual, while driving home from a restaurant, became involved in a dispute with another driver. The individual had to stop suddenly to avoid hitting the other driver's automobile. Ex. 5 at 35-36. After a series of driving incidents with the other driver, the individual arrived at his apartment. Ex. 5 at 36-37. The other driver had parked his vehicle in the street next to the individual's apartment's parking lot. Ex. 5 at 37-38; Tr. at 104. The individual then went into the trunk of his vehicle, obtained a tire iron and approached the other driver. Ex. 5 at 38. The other driver left and soon the

local police arrived. Ex. 5 at 38-39. The police had been contacted by a passenger in the other vehicle involved in the incident. Ex. 6 at 1. Local police officers observed the individual placing the tire iron back in his vehicle and subsequently placed the individual under arrest for Public Intoxication and Disorderly Conduct. Ex. 6 at 1. The individual later pled “Guilty” to both charges. Ex. F at 1.

In the summer of 2015, the individual met a woman (Girlfriend) who was a waitress at a local restaurant. Ex. 5 at 8. The individual began to give the Girlfriend a small amount of money to help her through a difficult situation which left her very depressed. Ex. 5 at 10. After getting to know the Girlfriend better and discovering that she was having problems with her vehicle, the individual offered to help her get a newer car from an auto dealer. To facilitate this transaction, the individual contributed \$6,000 toward the purchase of the vehicle. Ex. at 11. Initially, the individual attempted to be a “father figure” to the Girlfriend. Ex. 5 at 13. When she lost her job, the individual hired the Girlfriend to perform errands for him. Ex. 5 at 14. Later, the Girlfriend asked the individual for \$5,000 and he agreed. Subsequently, the individual began to have a romantic relationship with the Girlfriend. Ex. 5 at 13, 17.

In October 2016, before leaving on a trip, the individual went to see the Girlfriend. Ex. 5 at 17-18, 22. In a discussion about the sexual nature of their relationship, the individual indicated that he would let her determine what the extent of the relationship would be. Ex. 5 at 18. The Girlfriend then asked the individual to disrobe and sit in a chair while she tied the individual to the chair. Ex. 5 at 18. The Girlfriend then started to take pictures of the individual. Ex. 5 at 18. The individual then untied himself and hurriedly left the Girlfriend’s residence after getting dressed. Ex. 5 at 18. Because the individual had left his glasses and cell phone in the Girlfriend’s apartment, the individual contacted the local police who assisted him in retrieving these items. Ex. 5 at 20.

After returning to his residence, the individual received text messages from the Girlfriend with attached pictures of the individual disrobed and tied to a chair. Ex. 5 at 21. The text messages stated that she was going to make the pictures public unless the individual gave her money. Ex. 5 at 21. The individual then immediately contacted the local police. Ex. 5 at 21. The individual filed a complaint alleging that the Girlfriend was attempting to blackmail him by posting the pictures. Ex. J. The Officer who responded to the individual’s complaint advised the individual, “Don’t worry about it,” and stated that “she’s just blowing off steam.” Ex. 5 at 22; *see* Ex. M.

The Girlfriend later attempted to call the individual and then texted the individual to apologize. The Girlfriend stated that “I can’t think that I can live without you.” Ex. 5 at 22. The individual did not get the pictures back from the Girlfriend because the Girlfriend was later arrested on an unrelated charge and her cell phone containing the pictures was seized by the local police. Ex. 5 at 23. Despite these events, the individual provided the Girlfriend with \$1,100 to help her pay rent a few weeks before the February 2017 PSI. Ex. 5 at 25. In total, the individual provided approximately \$20,000 of assistance to the Girlfriend during their relationship despite having a current credit card balance of \$60,000. Ex. 5 at 69-70.

After examining the individual in April 2017, the DOE Psychiatrist issued a report (Report) where he summarized his findings as to the individual’s psychological condition. Ex. 3 at 13. The DOE Psychiatrist found that the individual had demonstrated severely impaired judgment in two areas of his life. Specifically, the individual’s 2015 arrest demonstrated severely impaired judgment in

failing to avoid conflict with another driver and then menacing the other driver with a tire iron. Ex. at 3. While acknowledging the possibility that the individual's judgment was impaired by alcohol consumption before the incident, the DOE Psychiatrist believed that the individual's behavior was unrelated to his alcohol consumption. Ex. 3 at 13. The individual also showed impaired judgment regarding the relationship with his Girlfriend. In the Report, the DOE Psychiatrist noted that the individual saw himself as a "savior" to his Girlfriend despite the lack of any professional training. Ex. 3 at 3. He also found that the individual had difficulty in recognizing that he had been exploited by his Girlfriend. Ex. 3 at 3. Further, the individual informed the DOE Psychiatrist that he still had a desire to help his Girlfriend. Ex. 3 at 13. The DOE Psychiatrist found that the individual did not fit into a particular psychiatric diagnostic condition; however, he determined that the individual had demonstrated "severely impaired judgment" in several areas of his life, and that similar incidents were likely to occur in the future in the absence of mental health counseling, and perhaps even with such counselling. Ex. at 14.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should not be restored. In this regard, I cannot find that restoring the individual's security clearance would not endanger the common defense and security, and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

1. Guideline E

The Guideline E security concern centers on the individual's alleged questionable judgment regarding his interactions with the Girlfriend.

In mitigation, the individual testified as to the nature of the relationship and his motivations in maintaining the relationship. The individual first met the Girlfriend at a restaurant. As he became friends with her, a mutual friend informed him that the Girlfriend was emotionally upset and that the Girlfriend had not left her residence for the prior two days. The individual called and got the Girlfriend to leave her residence. Tr. at 115-16. After meeting with her, he gave her \$60 to get ice cream for her son. Tr. at 116. His intention was that the Girlfriend get out of her residence and begin to resolve her problems. Tr. at 116. He gave her the money out of a sense of charity. Tr. at 116-17. Later, the individual helped the Girlfriend to get a new vehicle by making a \$6,000 down payment. Tr. at 117.

When the Girlfriend lost her employment at the restaurant, the individual hired her to do errands for him. Tr. at 119. However, despite his best efforts to get the Girlfriend to become functional and independent, she was not responding to the individual's efforts. Tr. at 119-20. The individual recalled receiving a text message from one of the Girlfriend's friends informing him that the Girlfriend was using illegal drugs; the text message asked the individual to try to "save" the Girlfriend. Tr. at 122-23. The individual then decided to try to have a romantic relationship with

the Girlfriend in order to help her. Tr. at 120. Shortly before the October 2016 blackmail incident, he entered into a romantic relationship with the Girlfriend. Tr. at 120.

The individual testified that he was willing to have a relationship with the Girlfriend because it would help her to move forward in her life. Tr. at 146. He testified that he believed that he would not have a long term relationship with the Girlfriend. Tr. at 146-47. However, he believed that by being in a relationship with the Girlfriend, he could help her to overcome the “hurdles” in her life and move forward. Tr. at 146-47.

On October 29, 2016, the individual visited the Girlfriend and gave her \$2,500 to help pay her rent and other expenses. Tr. at 123-24. Later that day he came back to see the Girlfriend and the Girlfriend became angry when he told her that he would be leaving town for a few days. Later, during this visit, the blackmail incident occurred. Tr. at 124-25. Because of his concern that the blackmail incident might raise security concerns, he made a formal report to the police regarding the incident but did not report the incident to his employer. Tr. at 130. Nonetheless, the individual testified that he believed that the blackmail incident was a “prank.” Tr. at 138.

The individual testified that he resumed the relationship with the Girlfriend after the blackmail incident in order to provide support to the Girlfriend and to help her “get on her feet.” Tr. at 135-36. After her arrest, the Girlfriend blamed the individual for her arrest, and by late December 2016, the individual was no longer involved in a romantic relationship with the Girlfriend. Nonetheless, the individual continued to assist the Girlfriend financially. Tr. at 137. However, the individual has not given any further financial assistance to the Girlfriend since January 2017. Tr. at 152.

The individual testified that he began to have misgivings about the Girlfriend’s character after the blackmail incident. Tr. at 140. However, he was willing to continue to help her because he felt responsible for her later arrest.³ Tr. at 140. The individual’s last contact with the Girlfriend was in September 2017 and at that time she asked if she could move into his residence. Tr. at 142. The individual informed her that she could not move in with him and the Girlfriend became angry and cut off all contact with him. Tr. at 142-44.

When asked if he would still be willing to help the Girlfriend if she asked, the individual stated that he would treat her decently as directed by his spiritual faith but would not have a relationship with her in the future. Tr. at 144-45. He describes himself as having always been involved with helping people, based on his faith. Tr. at 20.

The individual testified that he does not believe that he has a defect in judgment and reliability or in his ability to detect people with bad motivations. Tr. at 149. As a result of his relationship with the Girlfriend, he believes that he has learned valuable lessons and that he does not have a problem with his judgment, nor does he believe there should be an issue in or his maintaining a security clearance. Tr. at 149-50.

³ The individual reported to the local police in November 2016 that the Girlfriend was using illegal drugs and that another individual she was seeing was providing her the illegal drugs. The individual also informed the local police that weapons were being stored at the Girlfriend’s residence. Tr. at 132-33. This report led to the Girlfriend’s later arrest for Resisting Arrest and Assaulting a Police Officer. Tr. at 134

The Officer testified that he had known the Girlfriend for a number of years. Tr. at 84-84. While the Officer described the Girlfriend as a “nasty” person, he testified to his belief that the October 2016 blackmail incident was “not real.” Tr. at 85-86. He stated that it was his belief that she would not have actually released the pictures but wanted to “hold it [the pictures] over his head” to get money. Tr. at 86. The Officer believes that overall it was a “big joke,” but acknowledged that if the Girlfriend “sees somebody with money, she’s taking money off of them.” Tr. at 87

The Friend testified that the individual has been a good friend and was always available to help her or her parents. Tr. at 50, 57-58. The Friend testified that her parents have trusted the individual so much that they made him the executor of their estate. Tr. at 57. With regard to the individual’s involvement with the Girlfriend, she believes that this incident has been a major “wake-up call” for him to avoid similar situations. Tr. at 50.

After reviewing all of the testimony and evidence before me, I cannot find that the individual has resolved the Guideline E security concerns raised by his interaction with the Girlfriend. The individual demonstrated very poor judgment in continuing his relationship with the Girlfriend after the blackmail incident. I find little mitigation in the fact that he reported the incident to local police, especially in light of the fact that he did not report the incident to security officials at the DOE facility at where he worked. Further, I cannot find that this incident was a “prank,” despite the testimony of the individual and the Officer. The Officer’s testimony on this point is undercut by his assessment that the Girlfriend was inclined to try to obtain money from a person who she believed had financial resources and that he likely would have had probable cause to arrest the Girlfriend for extortion. Tr. at 93-94.

Assuming that the individual’s initial relationship with the Girlfriend was motivated by his spiritual beliefs, this fact, while admirable, does not provide mitigation. Motivation does not necessarily affect the potential security concerns raised by an individual’s actions. The Friend testified that she does not believe that the individual will ever be placed in a similar situation in the future. However, given the DOE Psychiatrist’s opinion regarding the individual, discussed below, as well as the individual’s own testimony that his impulse to help others may, “in a small measure,” blind him to the character of others, raises some concern for the individual’s future actions. *See* Tr. at 149.

There is also doubt related to the possible continuing existence of the compromising pictures at issue in this case. The Officer testified that the Girlfriend’s cell phone (which was used to send the pictures to the individual) had been seized pursuant to the arrest of the Girlfriend. Tr. at 82. This cell phone is currently in the possession of the local police department, and there are no proceedings requesting that the cell phone be returned. Tr. at 82. Nonetheless, it is uncertain as to what extent, if any, the compromising pictures were shared. In the PSI, the individual reported that the Girlfriend had showed a copy of the pictures to a mutual friend. Ex. 5 at 23. This uncertainty creates a potential security concern.

While I note the testimony of the individual’s friend which supports a finding that the individual has many admirable traits, I cannot find that this outweighs the Guideline E security concerns raised by the individual’s interactions with the Girlfriend. After reviewing the Guideline E mitigating factors, I find none are applicable in this case. Consequently, I find that the individual has failed to resolve the Guideline E security concerns raised by the Notification Letter.

2. Guideline I

The Guideline I concerns involve the DOE Psychiatrist's opinion that the individual's impaired judgment represents an obsessive-compulsive personality trait that is long standing in nature and is likely to persist in the future.

The individual challenges the DOE Psychiatrist's conclusions on several grounds. First, the individual believes that the 2009 domestic violence and 2015 disorderly conduct arrests were two isolated events from which it is inappropriate to conclude that he has an obsessive-compulsive personality trait. Tr. at 188. The individual also challenges the DOE Psychiatrist's analysis of his behavior, noting that in his career field, most practitioners tend to be obsessive-compulsive with regard to details of projects. Tr. at 188-90. Further, the individual challenges the DOE Psychiatrist's conclusions on the basis that the opinion was formed without full knowledge of all of the events in the individual's life. Tr. at 190.

In response, the DOE Psychiatrist testified that he concluded that the 2009 and 2015 arrests demonstrated that the individual had difficulty in formulating a proper response to the incidents. Tr. at 188. Further, he determined that the individual tends to be overly detailed in his responses to questions and his responses tend to contain many rationalizations and self-serving statements. Tr. at 188-89. He also indicated that both incidents were extreme and unprecedented, and that there may exist other incidents of which the DOE Psychiatrist is not aware. Tr. at 189-90. In the individual's explanation regarding his relationship with the Girlfriend, the individual, while proclaiming he was solely helping the Girlfriend, did not acknowledge the benefits he received from the relationship. Tr. at 191.

After reviewing the Report, the testimony and the other evidence in this case, I find that the individual has not fully mitigated the Guideline I security concerns. I find that the DOE Psychiatrist's opinion is adequately supported by the facts. The individual's challenges to the DOE Psychiatrist's analysis are unsupported by any expert opinion. The individual testified that, as of the time of the hearing, he has not sought any therapy for his alleged judgment issues or for his domestic violence incidents. Tr. at 160-61.⁴ Even if the individual receives therapy, the individual's judgment as it relates to his obsessive-compulsive personality trait may not be resolved. The DOE Psychiatrist testified that it would be difficult to determine whether the individual would respond to treatment for his personality issues. Tr. at 198. The individual's

⁴ The individual did use the DOE facility's Employee Assistance Program (EAP) in 2009 to help him work through the issues relating to his divorce. Tr. at 162. The individual testified would consider getting such counselling if it were a pre-requisite to get back his clearance. Tr. at 161-62.

After the hearing, the individual submitted a letter from a licensed clinical social worker (Counsellor) stating that the individual had begun individual therapy five days after the date of the hearing and had attended three counselling sessions. Ex. P at 1. The Counsellor found that the individual has depressive symptoms including insomnia, depressed mood and social isolation. Ex. P. at 1. The Counselor also stated that the individual was committed to make positive changes in his life and was attending religious services. The Counselor recommended a period of therapy for three months. Ex. P at 3. While I commend the individual for his efforts to address his problems, the recent nature and limited number of therapy sessions do not provide sufficient mitigation of the Guideline I security concerns.

personality traits are long-embedded and are probably not subject to a quick resolution. Tr. at 198. Given this, the security concerns raised by the individual's psychological condition remain extant. This vulnerability is made worse by the fact that the individual has testified that he currently lives a relatively isolated life with not many resources for advice and guidance regarding his decisions. See Tr. at 157-58. 184-85.

In reviewing the Guideline I mitigating factors, I find that none are applicable in this case. In sum, I find that the individual has not presented sufficient evidence to resolve the Guideline I security concerns raised by the Notification Letter.

3. Guideline J

The individual asserts that the domestic violence incidents in 2008 and 2009 should be mitigated by the passage of time since these events occurred approximately eight or nine years ago. Tr. at 13.

With regard to the 2015 arrest related to his altercation with another driver, the individual testified that he felt threatened when he discovered that the other driver had parked on the street next to his apartment's parking lot. Tr. at 104. He retrieved the tire iron from his vehicle and approached the other driver to threaten him. Tr. at 104. When asked why he didn't try to get assistance from the local police, the individual stated his belief that "he did not have a good opinion of the police at that time." Tr. at 105. The individual stated that he had consumed a few beers at a restaurant prior to this incident. Tr. at 109. The individual also testified that the associated police report of this incident was incorrect when it stated that he had followed the other car to his apartment. The individual asserted that the other driver had followed him. Tr. at 112. The individual asserts that, given the apparent threat he was under, these facts should mitigate any security concern from this incident. To avoid similar incidents, the individual is currently abstaining from alcoholic beverages. Tr. at 211.

The individual has also submitted evidence that his subsequent guilty pleas to the two 2015 charges, Public Intoxication and Disorderly Conduct, have been changed pursuant to a *Nunc Pro Trunc* hearing in October 2017. Ex. F. The individual has also submitted a letter from his Ex-Spouse attesting that she does not remember filing reports concerning the 2008- and 2009 domestic violence incidents. Ex. D. With regard to the May 2008 domestic violence report, the Ex-Spouse stated in a letter that she could not specifically recall the event but that the individual may have been yelling at her which caused her to back up against a towel rack and turn her head. The Ex-Spouse stated that this movement may have caused the towel rack to break and her glasses to bend. Ex. D at 1. The Ex-Spouse stated that her recollection of the events regarding the March 2009 arrest were consistent with the details listed in the police report of the arrest and which are reported in the Notification Letter. Ex. D at 1.

The Individual also asserts that a number of personal stressors played a role that would mitigate the concerns raised from that 2015 arrest. The individual testified that at around the time of this incident, he was dealing with the stress of his divorce from this Ex-Spouse, and financial pressures in supporting his family. Tr. at 14, 149-151. Additionally, his father was diagnosed with a serious illness and the individual had been helping to care for him. Tr. at 14, 149-51. His father eventually passed away, and this caused conflict with his brothers and sisters. Tr. at 15; Ex. L.

As an initial matter, the individual's subsequent not guilty findings pursuant to the *Nunc Pro Trunc* hearing is not totally dispositive as to whether the individual in fact participated in criminal conduct. In a criminal case, the prosecution must present sufficient evidence to prove guilt "beyond a reasonable doubt." In a security clearance proceeding, once evidence exists raising a security concern, the Individual has the obligation to resolve the concern. *See Personnel Security Hearing*, Case No. TSO-1048, *slip op.* at 2 (2011) (Part 710 "places the [evidentiary] burden on the individual because it is designed to protect national security interests."); *See Personnel Security Hearing*, Case No. PSH-11-0010, *slip op.* at 6 (2012).

In reviewing the evidence and testimony, I do not find the individual's account of the incident that led to the 2015 arrest to be totally credible. The individual's testimony that he felt such fear that he had to walk over to another vehicle to confront the other driver with a tire iron instead of going into his own apartment is not totally plausible. Further, the individual admitted to having three beers prior to the incident. Tr. at 109-10. Consequently, I cannot find that the individual has completely resolved the security concerns arising from this arrest. Additionally, I also find that the Ex-Spouse's attestations do not provide sufficient evidence to refute the reported domestic violence incidents in 2008 and 2009. The Ex-Spouse admits that her recollection is somewhat faded due to the lapse of time. Significantly, the Ex-Spouse confirmed the police report of the 2009 domestic violence incident. Ex. D at 1. Further, the testimony of the DOE Psychiatrist indicates that these incidents were related to the individual's inability to formulate a proper response to these incidents. The individual has not undergone any significant therapy that might help him in this regard. *See* Tr. at 179.

The individual asserts that Guideline J, mitigating factor ¶ 32(a), is applicable in this case. Ex. B at 1-2. This mitigating factor states, "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." Adjudicative Guidelines, Guideline J, ¶32 (a). Arguably, this mitigating factor might be applicable to the 2008 and 2009 domestic violence incidents. However, given the fact that, as recently as 2015, the individual was willing to threaten to use force against another driver, I cannot find that the 2008 and 2009 domestic violence incidents have been made irrelevant by the passage of time. I find no other Guideline J mitigating factor applicable in this case. Given the evidence before me, I do not find that the individual has resolved the Guideline J security concerns raised by the Notification Letter.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guidelines E, I, and J. 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 find that the individual has not brought forth sufficient evidence to resolve the security concerns associated with those guidelines. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should not restore the individual's access authorization.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: December 26, 2017