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

In the Matter of:	Personnel Security Hearing)		
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Filing Date:	May 10, 2013)	Case No.:	PSH-13-0058
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Issued: August 16, 2013

Hearing Officer Decision

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted DOE access authorization. For the reasons detailed below, I find that the DOE should not grant the Individual access authorization.

I. BACKGROUND

The Individual works for a DOE contractor in a janitorial position, and is currently an applicant for DOE access authorization. DOE Exhibit (Ex.) 3. As part of his application for access authorization, the Individual completed Questionnaires for National Security Positions (QNSPs) in June 2012 and October 2012. DOE Exs. 5, 6. During the application process, a routine background investigation performed by an Office of Personnel Management (OPM) investigator (hereinafter “the OPM investigation” or “the background investigation”) revealed that the Individual failed to disclose certain required information on the QNSPs, prompting the Local Security Office (LSO) to request that the Individual participate in a Personnel Security Interview (PSI) in January 2013. DOE Ex. 7; *see also* DOE Ex. 8 (the OPM Report). After reviewing the Individual’s complete personnel security file, the LSO notified the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (f) and (l) (Criteria F and L, respectively). *See* DOE Ex. 1 (Notification Letter, April 9, 2013). The

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed as Hearing Officer. At the hearing, the Individual testified on his own behalf, and offered the testimony of one witness, his wife.² The DOE counsel presented no witnesses, and submitted eight exhibits into the record (DOE Exs. 1-8). *See* Transcript of Hearing, Case No. PSH-13-0058 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including “the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to render a decision in the Individual’s favor, the Hearing Officer must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* *See generally* *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

² In a June 16, 2013, email, the Individual indicated that he wished to submit his response to the Notification Letter as a hearing exhibit. However, that document was already in the record, having been previously submitted by the DOE Counsel. *See* DOE Exhibit 2. In order to keep the record free of unnecessarily duplicative documents, it has not been re-entered into the record as a separate Individual’s Exhibit.

III. FINDINGS OF FACT

A. The Individual's History of Arrests and Citations and his Recent Statements Regarding his Prior Conduct

The Individual's criminal record purportedly includes the following arrests and/or criminal charges, spanning a period of over 40 years: (1) December 1969 – Drinking in a Motor Vehicle, Resisting Arrest, No Tail Lights, and Interference with an Officer;³ (2) February 1971 – Siphoning Gasoline; (3) August 1971 – Driving While Intoxicated (DWI), Reckless Driving, and No Driver's License; (3) October 1983 – DWI, Failure to Maintain, and Suspended Driver's License; and DWI, Driving on a Suspended License, and Driving within Traffic Lane;⁴ (4) March 1985 – DWI, Driving on a Suspended License, Driving on the Left Side of Road, Proof of Financial Responsibility, Failure to Pay Fines Imposed, and Failure to Complete Community Service; (5) April 1985 – Animal License Required, Failure to Obey Notice to Appear, and Failure to Appear; (6) June 1985 – Driving on a Suspended License; (7) January 1986 – Battery, Failure to Pay Fines Imposed, Failure to Comply with Domestic Violence Program, and Failure to Appear in Court; (8) February 1987 – DWI, Proof of Financial Responsibility, No Evidence of Registration, and Driving on a Revoked License; (9) March 1987 – Controlled Substance Prohibited, Failure to Appear, and Failure to Schedule Community Service; (10) March 1989 – DWI, Spotlight Glaring Beam, Driving Within Traffic Lane, and Driving on a Suspended License; (11) February 1996 – Battery Against a Household Member; (12) March 1997 – No Seatbelt/No Insurance; (13) April 1998 – Battery on a Household Member; (14) August 1998 – False Imprisonment and Aggravated Battery on a Household Member; (15) November 1998 – Aggravated Battery on a Household Member (Felony); (16) June 1999 – Unauthorized Use and Penalties; (17) August 1999 – Battery on a Household Member (Felony); (18) August 2003 – Aggravated Battery on a Household Member. *See* DOE Ex. 1; *see also* DOE Exs. 3, 4, 8.

During the January 2013 PSI, after considerable discussion regarding his extensive pattern of past criminal conduct, the Individual attributed many of the older incidents to former substance abuse problems for which he was successfully treated many years ago.⁵ DOE Ex. 7 at 266-67. With respect to the domestic violence incidents, the Individual noted during the PSI that they all involved his ex-wife. He alleged that his former spouse was abusive toward him and initiated the altercations, and he had no choice but to respond in kind. *Id.* at 250-28. Finally, the

³ The December 1969 charge is identified alternately as "Drinking in a Motor Vehicle ..." and "Driving in a Motor Vehicle ..." throughout the record. *See* DOE Exs. 3, 4, 8.

⁴ The Notification Letter lists two arrests in October 1983, occurring within five days of each other. Upon close review of the Individual's criminal history information detailed in the OPM Report, there appears to have been only one arrest in October 1983 for DWI and related charges. The court judgment on the charges was deferred pending the Individual's completion of supervised probation. DOE Ex. 8. However, when the Individual was arrested in March 1985 for DWI, in violation of the terms of his probation, the judgment on the October 1983 DWI-related charges was imposed. *Id.* That ostensibly explains two arrests within days of each other for nearly identical charges in October 1983. Nevertheless, there is no probative evidence in the record confirming that the two October 1983 entries in the Individual's criminal record are, in fact, duplicative.

⁵ The Individual's past substance abuse and subsequent treatment are not at issue in this proceeding.

Individual was unable to give assurances during the PSI that he would not respond in the same way in the future if provoked under similar circumstances. *Id.* at 263, 68.

B. The Individual's Alleged Misrepresentations, Falsifications, or Omissions

Section 22 of the QNSP contains subsections of questions specifically pertaining to an applicant's criminal history. DOE Exs. 5, 6; *see also* DOE Ex. 8. The introduction to Section 22 expressly states, "for this section[,] report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed." DOE Ex. 8 at 41. In a subsection titled "Police Record," the form requires disclosure of various types of arrests, charges, and citations that an applicant may have incurred within the last seven years. *Id.* The next subsection, titled "Police Record – EVER," requires an applicant to list any arrests, charges, or citations that an applicant has incurred that did not fall within the scope of questions in the previous subsection. *Id.* at 41-42. Finally, in a subsection titled "Police Record – Summary," the form restates the previous questions. *Id.* at 47.

In response to the various questions in Section 22, the Individual listed some offenses and related charges, including three DWI arrests (March 1985, February 1987, and March 1989) and two arrests related to domestic violence (February 1996 and August 2003). DOE Ex. 8 at 41-48, 192-96. The Individual omitted from the questionnaires the following alcohol-related arrests and/or charges: (1) December 1969 – Drinking in a Motor Vehicle, Resisting Arrest, No Tail Lights, and Interference with an Officer; (2) August 1971 – Driving While Intoxicated (DWI), Reckless Driving, and No Driver's License; (3) October 1983 – DWI, Failure to Maintain, and Suspended Driver's License; and DWI, Driving on a Suspended License, and Driving within Traffic Lane; (4) March 1999 – DWI, Spotlight Glaring Beam, Driving Within Traffic Lane, and Driving on a Suspended License. DOE Ex. 1; *see also* DOE Exs 5, 6. In addition, the Individual did not list the following domestic violence arrests and charges on his questionnaires: (1) January 1986 – Battery, Failure to Pay Fines Imposed, Failure to Comply with Domestic Violence Program, and Failure to Appear in Court; (2) April 1998 – Battery on a Household Member; (3) August 1998 – False Imprisonment and Aggravated Battery on a Household Member; (4) November 1998 – Aggravated Battery on a Household Member (Felony); (5) August 1999 – Battery on a Household Member (Felony). *Id.*

In addition, the QNSP requires disclosure of certain employment-related information, such as written warnings, reprimands, suspensions, or other disciplinary actions. *See* DOE Ex. 8 at 16-20 (Section 13A, "Employment Activities" at 16-20; Section 13C, "Employment Record – Summary" at 20). On both 2012 QNSPs, the Individual omitted reprimands that he received in October 2010 and a March 2011 while working for a previous employer. *Id.* at 16-20, 136-140; DOE Ex. 1.

IV. THE NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

As stated above, after reviewing the Individual's personnel security file, the LSO issued a Notification Letter identifying security concerns under Criteria F and L of the Part 710 regulations. DOE Ex. 1.

Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual's eligibility for access authorization, including responses given during personnel security interviews or on security questionnaires. 10 C.F.R. § 710.8(f). According to the Adjudicative Guidelines, "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 information. *Of special interest in any failure to provide truthful and candid answers during the security clearance process . . .*" Adjudicative Guidelines, Guideline E, ¶ 15 (emphasis added). The "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" is an example of conduct which may raise such security concerns. *Id.* at ¶ 16(b). Similarly, Criterion L concerns conduct tending to show that the Individual was "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). It is well-established that criminal conduct raises security concerns under Criterion L. Such conduct "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." *See* Adjudicative Guidelines, Guideline J, ¶ 30.

Given that the Individual's June 2012 and October 2012 QNSPs contain several omissions regarding his criminal history and other required information, I find that the LSO properly invoked Criterion F. Moreover, in light of the Individual's extensive history of criminal conduct, together with his recent statements during the PSI justifying his past domestic violence and his inability to give assurances that he would not repeat such conduct in the future if provoked, the LSO had ample grounds to invoke Criterion L.

V. ANALYSIS

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to find that granting the Individual DOE 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).

A. Criterion F – The Individual's Allegedly Deliberate Dishonesty on the QNSPs

The Individual's allegedly deliberate omissions of certain information regarding his criminal and employment histories on his June and October 2012 QNSPs form the basis for the security concerns regarding his honesty and trustworthiness raised in the Notification Letter under Criterion F.

1. The Individual's Mitigating Evidence

The Individual testified that he did not deliberately omit information regarding his past arrests and employment-related incidents on the questionnaires. Tr. at 47. Throughout his testimony, he offered a number of explanations for his omissions. First, he alleged that he believed he was

only supposed to list items for which he had “a complete record,” such as correct dates and other information, and alleged that he omitted the arrests and incidents for which he could not recall details. *Id.* Next, he maintained that, with respect to certain omissions, such as the DWI arrests, he believed the question simply required him to indicate whether he had ever been arrested for that particular type of offense, not that he list every arrest of that type. Tr. at 50. The Individual also attributed certain arrests on his record to a neighbor who, according to the Individual, fraudulently obtained the Individual’s social security number and used it to identify himself during his own arrests. Tr. at 50-51. The Individual testified that he determined it was not necessary to disclose charges for offenses that he himself did not commit. *Id.* However, he conceded that, regardless of whether he committed the offenses, the charges remain on his record, and, therefore, he was required to report them on the QNSPs.⁶ Tr. at 52. With respect to the omitted domestic violence arrests and/or charges, the Individual alleged that he did not list them because he believed that his ex-wife should have been charged instead of him since she instigated the incidents. Tr. at 55. Finally, the Individual also attributed the omissions generally to his faulty memory and his resignation over the fact that his record rendered him ineligible for a clearance regardless of what he listed on the forms. Tr. at 64, 65.

The Individual’s wife testified that she helped him complete the QNSPs. Tr. at 11. She stated that they spent considerable time completing forms, and “did the best [they] could with the information [they] could gather to try to answer all the questions.” Tr. at 11-12. The Individual’s wife stated that they did not make any changes in their responses between the June 2012 QNSP and the October 2012 QNSP. Tr. at 14. She indicated that, although the Individual did not recollect many details of his criminal history due to the passage of time, he knew that “there might be other [arrests].” Tr. at 19. She stated that they had some information about his past arrests and, although she tried to look up his court records on the internet, they “didn’t really have any luck trying to find things on the computer.” Tr. at 18-19, 22. She added, “we weren’t really trying to hide anything.” Tr. at 20. The Individual’s wife acknowledged that the Individual did not make any additional efforts beyond her internet search to find more complete information regarding his criminal record, such as visiting the police station to obtain an accurate copy of his arrest record. Tr. at 29. She stated that they discussed it, but he would have to go request the information himself and they believed that the Individual could not take a day off work to go to the police station because he was in a new job. *Id.* In addition, in contradiction to the Individual’s testimony, the Individual’s wife testified that both she and the Individual understood that the QNSP required disclosure of every offense, rather than simply an indication of whether he had ever been arrested for a particular type of offense, or information on offenses for which he had a detailed record. Tr. at 30-31.

2. Whether the Individual Has Mitigated the Criterion F Concerns

In light of the Individual’s assertion that his omissions were not an intentional attempt to withhold information during the security clearance application process, I must consider first the issue of “deliberateness.” *See* 10 C.F.R. § 710.8(f) (derogatory information includes evidence

⁶ The Individual provided no corroborating evidence to support his assertions regarding his allegedly compromised social security number. For example, the charges that are for offenses that the Individual attributes to his neighbor occurred 15 to 20 years ago, yet there is no evidence in the record that the Individual has made any attempts to clear his record of those purportedly erroneous charges. *See, e.g.,* Tr. at 50-51, DOE Ex. 7 at 272-73.

that an individual “*deliberately* misrepresented, falsified, or omitted significant information from . . . a [QNSP]”) (emphasis added). The absence of the requisite element of “deliberateness” by an individual who has allegedly misrepresented, falsified, or omitted required information is sufficient to mitigate the related Criterion F concerns. *See Personnel Security Hearing*, Case No. TSO-0983 (2011).

In evaluating the evidence before me, the Part 710 regulations direct me to consider, *inter alia*, “the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, [and] their credibility.” 10 C.F.R. § 710.27(b). In this case, the Individual’s varying explanations regarding the omissions were uncorroborated or, in some instances, contradicted outright by the evidence in the record. Consequently, his attempts to justify his failure to disclose significant required information appear disingenuous and, together with my observations of the Individual’s demeanor and candor at the hearing, leave me with serious doubts as to the credibility of the his testimony. Therefore, I am unable to accord much weight, if any, to his testimony.

In addition, the Individual’s actions belie his testimony that his omissions were not a deliberate attempt to withhold required information. It is undisputed that the Individual knew when he submitted the first QNSP in June 2012 that his responses were inaccurate, incomplete, or both. Then, four months later in October 2012, he submitted the second QNSP again without altering his responses regarding his criminal history, or undertaking any additional efforts to obtain the necessary information, or giving any indication on the questionnaire that the information was incomplete. To the contrary, the evidence indicates that he hoped that the missing information would not be discovered during the background investigation. This behavior is inapposite to the honesty and forthrightness expected of clearance-holders. Further, the Individual expressly stated during the PSI that, for various reasons, he intentionally omitted the information on the QNSPs. Although the Individual testified that his admission during the PSI was prompted by the interviewer, the record indicates otherwise. *See DOE Ex. 7 (PSI Transcript)* at 289-295 (wherein the Individual stated that when he completed the forms he believed that the omitted information would not come to light, was “meaningless” and not necessary to report, and/or might jeopardize his ability to obtain a security clearance); *see also DOE Ex. 8* at 103-105, 115. (OPM Report, Personal Subject Interview, summarizing Individual’s explanations of his omissions on QNSPs of DWI arrests (“[the Individual] could not find court records for the others and was hoping that they would not be discovered during the investigation”), domestic violence arrests (“he only listed the two offenses on the [QNSP] because he could not find records for the other offenses and was hoping that the others would not be revealed in the investigation”), and, the omissions in generally (“He did not think that omitting this information would matter that much . . . [he] felt that if he disclosed all of his past arrests, he might not get the job.”)).

Although the Individual’s wife testified that the Individual did not intentionally withhold information, her testimony is outweighed by the other evidence in the record. Accordingly, I must conclude that the Individual’s omissions on his QNSPs were deliberate. The remaining question is whether the Individual has brought forward sufficient evidence to mitigate the security concerns raised by such deliberately untruthful conduct.

According to the Adjudicative Guidelines, among the several examples of conditions which may serve to mitigate security concerns raised by an individual's deliberate dishonesty are that "the individual made *prompt, good-faith effort to correct the omission, concealment, or falsification* before being confronted with the facts" and "that the offense is so minor, or so much time has passed, or the behavior is so infrequent, 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 E, ¶ 17 (emphasis added).

In this case, the Individual has brought forward no evidence of any efforts on his part to correct the omissions on either QNSP, despite his knowledge that the forms were inaccurate when he submitted them. To the contrary, as noted above, he instead hoped that the omitted information would not come to light. In addition, throughout the various stages of the security clearance application process, the Individual has demonstrated his indifference to the applicable reporting requirements. For example, several of the omissions were driven by the Individual's own determinations regarding the necessity of reporting certain information, regardless of the actual requirements. As a result, I have little confidence at this time that such deliberate dishonesty would not recur in the future. Finally, it is well-settled in previous cases of this office that where there exist security concerns attributable to irresponsible behavior, such as falsifications of security questionnaires or other forms of dishonesty, a subsequent pattern of responsible behavior is of critical importance in mitigating those concerns. *See, e.g., Personnel Security Hearing, Case No. PSH-11-0017 (2012); Personnel Security Hearing, Case No. TSO-0568 (2008)*. In this case, as of the hearing, approximately nine months had elapsed since the Individual submitted the October 2012 QNSP, his last known deliberate act of dishonesty, and even less time since the DOE learned the full extent of his omissions.⁷ Consequently, not enough time has passed for the Individual to establish a pattern of honest and responsible behavior sufficient to mitigate the concerns raised by his recent dishonest conduct.

Accordingly, based on the foregoing, I find that the Individual has not mitigated the Criterion F concerns raised by his deliberate omissions of required information on the June 2012 and October 2012 QNSPs.

B. Criterion L – The Individual's Pattern of Criminal Conduct and His Willingness to Comply with Laws, Rules, and Regulations

As indicated above, the Criterion L concerns in this case stem from the Individual's history of criminal arrests and charges, as well as certain of his statements regarding his past criminal behavior.

1. The Individual's Mitigating Evidence

Other than the arrests that the Individual attributed to a neighbor who allegedly stole his social security number, discussed above, the Individual generally did not dispute the evidence in the record regarding his criminal history. Rather, he stated, "I got into a lot of trouble when I was drinking, but I haven't drank in 21 years. And as far as getting angry, my only problem when I

⁷ The OPM Report indicates that the background investigation was completed in December 2012. DOE Ex. 8.

got angry was with my ex-wife, but she's the one who provoked me all the time." Tr. At 58. The Individual added that, after his treatment for his past alcohol and substance abuse in 1992, he became more religious and his "behavior has changed completely." Tr. at 66.

With respect to his past domestic violence arrests, the Individual asserted that he "never assaulted" his ex-wife, but rather acted in self-defense when she assaulted him. Tr. at 71. The Individual disagreed that certain physical acts against his ex-wife, such as pulling her hair during an argument, shoving her, or "holding her back," constituted assault, because she had physically assaulted him on previous occasions. See Tr. at 72-74. However, he acknowledged that there were times where, although his ex-wife may have initiated a verbal confrontation, he was the first to use physical force. Tr. at 72-73. For example, the Individual discussed a confrontation that occurred after he became angry with his former spouse during an argument. He stated, "I think she said, 'you better shut up,' or something like that, or 'I'm going to stab you again.' I got angry because she said that I'm going to stab you, like if I was supposed to keep my mouth shut just because she stabbed me the first time. It's not going to happen. See, she wanted to be in . . . charge of the house. She was too controlling. And now I know from the Bible it says I should – the man should be the head of the house." Tr. at 74. The argument culminated in the Individual confronting his ex-wife and pulling her hair. Tr. at 73-74. When asked whether he believed he would respond similarly if provoked in the future, the Individual replied, "under the same circumstances . . . I think I would respond the same way." Tr. at 75. The Individual stated that he and his ex-wife no longer have any contact, and he does not know her whereabouts. *Id.* Finally, he testified that there is currently no one in his life with whom he has a tense or hostile relationship. Tr. at 76.

The Individual's wife testified that there have been no incidents of domestic violence in their nearly eight-year marriage. Tr. at 27, 34. She stated that, while they have had minor disagreements over the years, she and the Individual have never had serious arguments. Tr. at 33. She added, "we really get along well." Tr. at 34. The Individual's wife further stated that she has not known the Individual to have any serious arguments or altercations, verbal or physical, with anyone. *Id.* She is aware of the incidents in the Individual's past, but testified that, in her experience, the Individual is "just a very peaceful person, really" and "pretty calm." Tr. at 35.

2. Whether the Individual has Mitigated the Criterion L Concerns

Among the factors that may serve to mitigate security concerns raised by an individual's past criminal behavior are that the criminal conduct was not recent, is unlikely to recur, and there is evidence of rehabilitation, which may include "remorse." Adjudicative Guidelines, Guideline J, ¶ 32. In this case, the Individual's criminal conduct is not recent. Ten years have elapsed since the Individual's most recent criminal activity, a 2003 arrest for Aggravated Battery on a Household Member following an altercation with his ex-wife. Since that time, there is no evidence that the Individual has engaged in any other criminal activity. Moreover, the change in the Individual's lifestyle since his 1992 alcohol and substance abuse treatment and his subsequent abstinence weighs in his favor. Under most circumstances, this would be ample evidence of rehabilitation and unlikelihood of recurrence, which are identified in the Adjudicative Guidelines as mitigating factors. However, the Individual's own statements

regarding his previous criminal conduct – specifically, his incidents of violence toward his ex-wife – are troubling.

The Individual expressed no remorse for his past violent behavior toward his former spouse, but rather continued to justify his conduct as a necessary and appropriate response under the circumstances. The record is replete with the Individual's statements in that regard, not only at the hearing, but also during the PSI and OPM investigation. *See, e.g.*, DOE Ex. 7 at 256-57, 264; DOE Ex. 8 at 104, 114-15. Finally, the Individual was unable to give assurances that he would not engage in similar conduct in the future should he be faced with similar circumstances. *See* Tr. at 75; DOE Ex. 7 at 253. Given that the Individual has consistently attributed his past acts of violence solely to the instigation of his ex-wife, from whom he been divorced for over a decade and with whom he has no contact, his doubts regarding how he might respond in future situations if provoked create some doubts regarding whether the Individual's past conduct was tied to one specific person as he alleges. There is simply insufficient reliable evidence in the record to resolve those doubts in favor of the Individual. Consequently, the Individual's own statements leave me unable to conclude that his past criminal behavior – specifically, violence when provoked to anger – is unlikely to recur in the future, despite the length of time since the previous incident. *See* 10 C.F.R. § 710.7(a) (“Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.”). Accordingly, I find that the Criterion L concerns remain unresolved.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria F and L of the Part 710 regulations. I further find that there is insufficient information in the record to mitigate those concerns. Therefore, I am unable to conclude that granting the Individual 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). Accordingly, I find that the DOE should not grant the Individual access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: August 16, 2013