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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: August 27, 2019) Case No.: PSH-19-0047
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Issued: November 25, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”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

On August 23, 2018, the Individual was arrested and charged with “operating a vehicle under the influence of intoxicating liquor or drugs, aggravated” (A-DUI). Exhibit (Ex.) 11. At the time of this arrest, the Individual had an extensive history of arrests, including five other alcohol-related arrests. *See* Ex. 4 (summarizing the Individual’s arrest record).

After receiving the Individual’s report of the August 23, 2018, arrest, the Local Security Office (LSO) requested that the Individual undergo an evaluation by a DOE-contracted psychologist (DOE Psychologist). On March 29, 2019, the DOE Psychologist conducted a clinical interview of the Individual. Following the clinical interview, the DOE Psychologist issued a psychological assessment (Report) in which she concluded that the Individual met the diagnostic criteria for Unspecified Alcohol-Related Disorder under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-V)*, and that the Individual suffered from a personality condition

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.

characterized by providing false information and failing to take responsibility for his actions.² Ex. 18 at 8–9.

The Individual’s history of criminal activity and the Report raised substantial security concerns about the Individual. Accordingly, the LSO informed the Individual, in a notification letter dated June 19, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under “Guideline G, Alcohol Consumption,” “Guideline I, Psychological Conditions,” and “Guideline J, Criminal Conduct.” Ex. 1.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on August 27, 2019. At the hearing that I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his daughter, a licensed substance abuse counselor (Counselor), his Counselor’s supervisor (Treatment Supervisor), his girlfriend, a psychologist employed at the site at which the Individual is employed (Site Psychologist), and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-19-0047 (hereinafter cited as “Tr.”). The LSO submitted 27 exhibits, marked as Exhibits 1 through 27. The Individual submitted 12 exhibits marked as Exhibits A through L.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as one of the bases for denying the Individual a security clearance. Ex. 1.

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Notification Letter cited the DOE Psychologist’s determinations that the Individual was a binge consumer of alcohol to the point of impaired judgement and met the diagnostic criteria for Unspecified Alcohol-Related Disorder (UARD) under the *DSM-V*; it also cited the Individual’s history of six alcohol-related arrests. Ex. 1 at 1–2. The Individual’s six alcohol-related arrests, binge consumption of alcohol to the point of impaired judgement, and diagnosis of UARD justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

The LSO cited Guideline I (Psychological Conditions) as the second basis for denying the Individual a security clearance. Ex. 1 at 2.

Certain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern under Guideline I. *Id.* The Notification Letter cited the DOE Psychologist’s opinion that the Individual’s pattern of providing false information and failing to take responsibility

² The DOE Psychologist further opined that the Individual “has binge consumed alcohol to the point of impaired judgment.” Ex. 18 at 8.

for his actions constituted a personality condition that undermined his judgement, reliability, and trustworthiness. Ex. 1 at 2. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgement, stability, reliability, or trustworthiness justifies the LSO's invocation of Guideline I in the Notification Letter. Adjudicative Guidelines at ¶ 28(a).

The LSO also cited Guideline J (Criminal Conduct) in denying the Individual a security clearance. Ex. 1.

Criminal activity creates doubt about a person's judgement, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶ 30. The Notification Letter listed 15 instances in which the Individual was charged or cited for engaging in unlawful conduct, including the Individual's six arrests for alcohol-related offenses.³ Ex. 1 at 3–4. The Individual's extensive history of arrests justifies the LSO's invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See 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 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 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. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

IV. FINDINGS OF FACT

The Individual has maintained a DOE security clearance since 1993, despite having an extensive criminal history, beginning on July 28, 1987, when he was arrested for Failure to Show Financial Responsibility. Ex. 20 at 10–13, 30.

³ Three of these 15 arrests (the June 27, 2006, citation for Failure to Yield the Right of Way; the November 29, 1989, citation for Speeding; and the April 4, 1987, citation for Careless Driving) were minor traffic offenses that did not merit inclusion in the Statement of Charges.

Prior to seeking a DOE security clearance in 1993, the Individual had been charged or cited with careless driving on two occasions, minor in possession, driving without a valid driver's license, and commercial burglary. *See* Ex. 1 at 3–4. In July 1993, less than a month before a personnel security interview (PSI) to discuss his criminal conduct, the Individual was cited for open container. *See* Ex. 26 at 95–97.

In 2004, the Individual's wife obtained a temporary order of protection against the Individual. Ex. 15. During a PSI to address the derogatory information, the Individual indicated that his wife had called him an alcoholic and alleged that his behavior while drinking was part of her basis for seeking the order of protection. Ex. 25 at 14, 20. The Individual reported that he did not believe that he had a problem with alcohol, and that his disputes with his wife were not related to his consumption of alcohol. *Id.* at 66–68.

In July 2005, the Individual was charged with A-DUI. *See* Ex. 1 at 3. In 2006, he was cited for failure to yield right of way, speeding, and driving on a suspended or revoked driver's license, following a vehicle accident. *Id.* During a PSI in February 2007, the Individual reported that he had not consumed any alcohol since his arrest for A-DUI. Ex. 24 at 21. The Individual described how he had met with a counselor on a weekly basis from August 2005 to September 2006 to address his alcohol-related issues. *Id.* at 47–54. The Individual expressed that he did not believe that he had a problem with alcohol, but that he had stopped consuming it because of how it had interfered with his life, and that it was not worth it to return to drinking. *Id.* at 52–54.

During a follow-up PSI in November 2007, the LSO questioned the Individual concerning the lack of records in its possession related to the Individual's 2005 A-DUI. The Individual asserted that he had reported his 2005 A-DUI to DOE but had filled out the form incorrectly. Ex. 23 at 59, 70–71. According to the Individual, he knew he could not conceal an arrest of which there was an official record and “it would be ludicrous to try to hide this.” *Id.* at 71, 75. The Individual also described how, on the night of his arrest for A-DUI, he had consumed more beers than he had intended at the urging of friends, and chose to drive home. *Id.* at 77–79, 83. The Individual reported that he had abstained from alcohol since the night of his A-DUI because his “clearance is a lot more important than a beer.” *Id.* at 108–09.

The Individual resumed drinking in 2008 or 2009 when he sometimes consumed one or two beers with co-workers on Thursdays or Fridays after work. Ex. 22 at 24. The Individual reported that he went through a bout of unemployment, during which he increased his drinking to three or four beers per sitting. *Id.* at 26. By 2015, the Individual reported that he typically consumed one to two beers when drinking with co-workers after work, and three to four beers per sitting when at home and on special occasions. *Id.* at 27–28.

In October 2015, the Individual was arrested and charged with A-DUI for the second time after he failed a field sobriety test. Ex. 13 at 6. The Individual's breath alcohol concentration (BrAC) was measured at .114. *Id.* at 7. During a PSI to address his second A-DUI, the Individual claimed that he consumed two 12-ounce beers and one shot of tequila at a restaurant between 90 minutes to two hours prior to driving. Ex. 22 at 10–12. When asked about his future intentions as to drinking and driving during this PSI, the Individual replied “[p]eriod, none.” *Id.* at 22. The Individual opined that he did not have a problem with alcohol, and that he knew he did not because he could be around alcohol without overindulging. *Id.* at 42–43.

In August 2018, the Individual was arrested and charged with his third A-DUI, after a police officer observed the Individual asleep in the driver's seat of a parked car. Ex. 11 at 7. The Individual failed a field sobriety test and refused to submit to alcohol testing. *Id.* at 7–8. The arresting officer indicated in his report that the Individual showed significant signs of impairment, including bloodshot eyes, slurred speech, and swaying when he attempted to stand in one place, but noted that the Individual claimed to have consumed only one or two beers. *Id.* at 7. In a personnel security information report that the Individual submitted to DOE concerning his arrest, the Individual reported that he had consumed four miniature bottles of bourbon at a liquor store, and that a friend had driven the Individual in his truck to the parking lot where the Individual's daughter was to pick him up. *Id.* at 3. The Individual's driver's license was suspended. In December 2018, the Individual was pulled over for failing to obey a traffic signal, and was cited for driving while his license was suspended. Ex. 6.

On March 29, 2019, the DOE Psychologist conducted a Clinical Interview of the Individual. The DOE Psychologist reported that, during the Clinical Interview, the Individual admitted to consuming six miniature bottles of bourbon and then driving his vehicle to the parking lot. Ex. 18 at 3. The DOE Psychologist noted that this admission was inconsistent with his previous statements to the LSO and to the court adjudicating his most recent A-DUI.⁴ *Id.* at 8. During his clinical interview, the Individual indicated that he had abstained from alcohol since his 2018 arrest, and that he had no plans to return to drinking in the future. *Id.* The Individual denied that he had a problem with alcohol, and expressed that he had no intention to seek treatment related to his alcohol use since completing court-ordered counseling. *Id.* at 7.

The DOE Psychologist ordered two alcohol tests for the Individual: a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test, both of which were negative. *Id.* at 6. According to the medical doctor who provided the test results to the DOE Psychologist, the EtG test results showed that the Individual had not consumed alcohol in the three days prior to meeting with the DOE Psychologist, and the PEth test results provided evidence that the Individual had not been drinking on a regular, heavy basis for several weeks prior to the test. *Id.*

On April 11, 2019, the Psychologist issued the Report. Based on the Individual's lack of recognition of his problems with alcohol, his dependence on external controls to regulate his drinking, and his repeated relapses after abstaining from alcohol, the DOE Psychologist determined that the Individual met the diagnostic criteria for UARD under the *DSM-V*. *Id.* at 7–8. The DOE Psychologist also concluded that the Individual was a binge consumer of alcohol to the point of impaired judgement based upon his account of consuming excessive quantities of alcohol on two occasions in 2018 and her belief that he had done so on other occasions based upon the unreliability of the Individual's accounts of his drinking. *Id.* Finally, the DOE Psychologist concluded that the Individual's "pattern of providing false information and his failure to take responsibility for the consequences of his actions form a personality condition which can impair judgement, reliability, and trustworthiness." *Id.* at 9. The DOE Psychologist recommended that the Individual address his UARD by: (1) abstaining from alcohol for at least twelve months; (2) participating in alcohol

⁴ During the clinical interview, the Individual reported that he had entered into a plea agreement concerning his most recent arrest for A-DUI, and that the agreement reduced the charge to Reckless Driving. *Id.* at 3.

rehabilitation counseling with a therapist specializing in substance abuse counseling or attend Alcoholics Anonymous (AA) meetings on a weekly basis.⁵ *Id.* at 8–9.

The Hearing

The Individual's daughter, who resides with the Individual, testified that she had not observed the Individual consume alcohol in approximately two years. *Tr.* at 12–13. The Individual's daughter reported that both she and the Individual's son keep alcohol in the family home. *Id.* at 12. The Individual's daughter recounted that, on the night of the Individual's 2018 arrest for A-DUI, the Individual had called her to ask her to pick him up because he had consumed too much alcohol to safely drive. *Id.* at 13–14. The Individual's daughter arrived at the parking lot after the police, and did not interact with the Individual prior to his arrest. *Id.* at 14–15. The Individual's daughter speculated that the Individual had driven approximately three blocks from the liquor store to the parking lot before calling her. *Id.* at 15–16. The Individual's daughter said that the Individual was participating in AA and that he had told her that he did not intend to consume alcohol ever again. *Id.* at 22–23.

The Individual's Counselor testified that the Individual voluntarily sought treatment in a four-and-one-half week intensive outpatient treatment (IOT) program offered at the facility which employs the Individual's Counselor. *Id.* at 30, 39. The treatment facility at which the Individual's Counselor is employed conducted an initial assessment of the Individual when he sought treatment, and diagnosed the Individual with Alcohol Use Disorder, Moderate, under the *DSM-V*. *Id.* at 35.

The Individual's Counselor met with the Individual 12 times for individual counseling, and indicated that the Individual also participated in group counseling with another counselor. *Id.* at 36. The Individual's Counselor testified that the Individual reported consuming six shots of bourbon within 90 minutes on the night of his 2018 arrest for A-DUI. *Id.* at 33. The Individual successfully completed the IOT in March 2019, and the Individual's Counselor reported that the Individual expressed the intention not to consume alcohol again in the future. *Id.* at 36–39. The Individual's Counselor expressed significant confidence that the Individual would abstain from alcohol over the next five years, but expressed some reservations that the Individual would continue to abstain after retiring and leaving the structure of his work environment. *Id.* at 40.

The Individual's girlfriend testified that she and the Individual live in different states, and that they only see each other approximately once per month. *Id.* at 52. She further reported that, in the approximately three years that she had known him, she had never observed him consume alcohol. *Id.* at 53–54. She also testified that the Individual had not talked to her about his alcohol treatment or his future intentions with regard to alcohol. *Id.* at 57.

The Treatment Supervisor testified that she oversees the facility that provided the IOT in which the Individual participated. *Id.* at 68. She recounted that she interacted with the Individual on a few occasions during group therapy, but that she generally did not have direct contact with patients because of her supervisory responsibilities. *Id.* at 68–69. The Treatment Supervisor recalled that the Individual was compliant throughout the course of treatment, never tested positive for alcohol

⁵ The DOE Psychologist further opined that the Individual should undergo random alcohol testing, including PEth testing, in order to establish an objective basis for showing that he had abstained from further alcohol use. *Ex.* 18 at 8-9.

on random Breathalyzer tests, actively participated in AA, and had manifested the intention to abstain from alcohol following completion of the IOT. *Id.* at 69–71.

The Site Psychologist testified that she had met with the Individual for an evaluation in September 2018 and a follow-up meeting in February 2019. *Id.* at 88. The Site Psychologist reported that the Individual had told her during an evaluation that, on the night of his 2018 arrest for A-DUI, he had consumed alcohol at a liquor store and was driving away when he realized that he was not fit to drive and pulled into a parking lot. *Id.* at 81. The Site Psychologist reported that the Individual had undergone periodic random alcohol tests from September 2018 to February 2019, and had tested negative on each occasion. *Id.* at 83–84. The Site Psychologist indicated that the Individual was a high-risk drinker based on his history of binge-consuming alcohol after periods of sobriety. *Id.* at 86–87. While acknowledging the Individual’s pattern of alcohol-related arrests, the Site Psychologist speculated that “something had shifted” in the Individual after the 2018 arrest and noted that he had received more intensive treatment than after his previous arrests. *Id.* at 87–88.

The Individual acknowledged that he had engaged in a significant amount of criminal conduct, but asserted that he did not represent a security threat to DOE because he had always maintained work-related information as confidential and had never engaged in misconduct at work during his long career. *Id.* at 98–99. The Individual also asserted that most of his unlawful conduct was related to alcohol, and that he was unlikely to engage in such conduct in the future because he intended to abstain from alcohol. *Id.* at 99–100.

According to the Individual, on the night of his 2018 A-DUI, he and some colleagues decided to have drinks and socialize. *Id.* at 102. When the Individual and a friend got in the Individual’s vehicle to go home, the Individual perceived that he was not in a fit state to drive and decided to drive the vehicle outside of city lines and call his daughter to pick him up. *Id.* at 103. The Individual asserted that he had never denied driving the vehicle to a parking lot and that he did not remember writing the incident report which stated that “I did not drive my vehicle.” *Id.* at 106–07; *see also* Ex. 11 (The incident report in which the Individual wrote: “When we left [the liquor store] a friend drove me in my truck to a parking lot near the airport, where my daughter was going to pick me up. I did not drive my vehicle.”).

The Individual also described his participation in the IOT. According to the Individual, each week included alcohol testing, one hour of AA, one hour of individual counseling, and two-and-one-half hours of group sessions. *Tr.* at 109. The Individual reported that AA meetings were “eye opening” as to the consequences of alcohol abuse. *Id.* at 111. The Individual reported that he currently attends approximately two AA meetings each month and that a friend of his had agreed to act as his AA sponsor. *Id.* at 112, 14. The Individual reported that he is currently working on Step 3 of the AA Twelve Step Program, and admitted that “the hardest step is admitting that you’re an alcoholic.” *Id.* at 114. The Individual reported that he did not “feel like [] an alcoholic, but alcohol got [him] where [he is] at” and that he recognizes that alcohol has caused problems in his life. *Id.* at 113.

The Individual testified that he did not intend to consume alcohol in the future. *Id.* at 110. The Individual further claimed that he had demonstrated the ability to refuse alcohol when socializing with friends and co-workers since his 2018 arrest for A-DUI, and opined that he could continue to reject alcohol when offered it in the future. *Id.* at 110–11.

After observing the testimony of each of the other witnesses. The DOE Psychologist testified that the treatment program in which the Individual had participated was not as intensive in terms of the number of hours of treatment per week or duration of treatment as she had anticipated when recommending treatment in her Report. *Id.* at 135. She also opined that it was unusual for a patient to use a friend as an AA sponsor because a person with whom a patient has a personal relationship is less well suited to holding them accountable to sobriety than an independent sponsor. *Id.* at 137.

The DOE Psychologist opined that the Individual was at moderate risk of relapsing to problematic drinking based upon his prior behavior. *Id.* at 140–41, 143. The DOE Psychologist noted that the Individual had previously abstained from alcohol while being monitored, only to return to drinking after he convinced DOE that he had resolved his alcohol problems and the monitoring was removed. *Id.* The DOE Psychologist also noted that, in light of the Individual's prior behavior and the presence of alcohol in his home, she was not confident that he had abstained from alcohol and noted that the Individual had not provided objective evidence of his abstinence from alcohol. *Id.* at 143. The DOE Psychologist also observed that the Individual had not followed her treatment recommendation to pursue aftercare. *Id.* The DOE Psychologist indicated that, based on the information before her, the UAUD diagnosis is appropriate and that the Individual's prognosis for avoiding a relapse to problematic drinking is only "fair." *Id.* at 151, 154.

With respect to her findings concerning the Individual's psychological state, the DOE Psychologist testified that her conclusions were based upon the Individual's misrepresentations concerning the extent of his drinking prior to his divorce from his wife, his inconsistent accounts of whether or not he had driven his vehicle after drinking on the night of his 2018 A-DUI, his denial that he has a problem with alcohol, and his attribution of consuming more alcohol than he intended to pressure from friends and co-workers. *Id.* at 146–47. The DOE Psychologist admitted that the Individual's misrepresentations did not form the basis for a diagnosis under the *DSM-V*, and that her finding that they constituted a mental condition was intended to alert the DOE of her concerns about the Individual's lack of candor. *Id.* at 148, 150. She further testified that she felt that the constraints of the scope of her evaluation required her to provide these opinions in response to DOE's questions concerning whether the Individual demonstrated an emotional, personality, or behavioral condition. *Id.* at 148, 150.

V. ANALYSIS

Guideline G Concerns

The Individual's six alcohol-related arrests, binge consumption of alcohol to the point of impaired judgement, and his diagnosis of Alcohol-Related Disorder by the DOE Psychologist all raise security concerns under Guideline G of the Adjudicative Guidelines. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and

established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)–(d).

None of the mitigating conditions under Guideline G are applicable in this case. The A-DUI that precipitated this hearing is the third occasion on which the Individual's arrest for A-DUI has called into question his eligibility for a security clearance. The Individual abstained from alcohol following each of his prior arrests for A-DUI and promised the DOE that he would not drink and drive in the future, and then, on three previous occasions, eventually returned to misusing alcohol. The Individual's recurring alcohol-related misconduct, even after periods of abstinence from alcohol and promises to change his behavior, calls into serious question his reliability, trustworthiness, and judgement, and leads me to conclude that the Individual's alcohol-related misconduct will recur in the future if his security clearance is restored. Therefore, the Individual does not meet the first mitigating condition under Guideline G. *Id.* at ¶ 23(a).

The third mitigating condition is inapplicable because the Individual is not currently in treatment, and has previously relapsed after counseling for alcohol abuse. *Id.* at ¶ 23(c). The second and fourth mitigating conditions are also inapplicable. Both the second and fourth mitigating conditions require that an individual demonstrate "a clear and established pattern of modified consumption or abstinence." *Id.* at ¶ 23(b), (d). The Individual did not undergo the laboratory testing recommended by the DOE Psychologist after her clinical interview of the Individual in March 2019 that might have objectively supported his claims of abstinence. Nor has the Individual provided the testimony of witnesses with knowledge of his drinking habits prior to his 2018 arrest for A-DUI who might have corroborated his claims to have modified his behavior with regard to consuming alcohol. The Individual's daughter testified that she had not observed the Individual consume alcohol in several years, despite the Individual telling the DOE Psychologist in the clinical interview that he consumed alcohol three times weekly prior to his 2018 arrest for A-DUI, and the Individual's girlfriend does not see him sufficiently frequently to meaningfully testify as to his day-to-day habits. I find the Individual's testimony insufficient in of itself to establish his abstinence from alcohol, particularly in light of his prior misrepresentations concerning his drinking. Therefore, I find that the second and fourth mitigating conditions under Guideline G are not applicable in this case. *Id.* at ¶ 23(b), (d). Most importantly, even if the Individual has been abstaining from alcohol use since August 23, 2018, as he has claimed, his history of three previous relapses has convinced me that he is an unacceptable risk.

In addition, the Individual has not participated in the aftercare recommended by the DOE Psychologist, and the DOE Psychologist expressed a concern that the IOT in which the Individual participated was not sufficiently rigorous to provide him with optimal treatment. For these reasons, I conclude that the Individual has not "successfully completed a treatment program along with any

required aftercare,” and find further support for my conclusion that the fourth mitigating condition is inapplicable. *Id.* at ¶ 23(d).

Guideline I Concerns

In her Report, the DOE Psychologist opined that the Individual’s pattern of providing false information and failure to take responsibility for the consequences of his actions constituted a personality condition. During the hearing, the DOE Psychologist provided examples of the Individual’s lack of candor in which the Individual had misrepresented his drinking and the circumstances of his prior arrests to her and to other persons in the security investigative process. The DOE Psychologist also testified that she felt constrained by the manner in which questions concerning the Individual’s judgement, reliability, and trustworthiness were put to her by the LSO, and that she felt that the only way she could draw attention to the Individual’s lack of candor was as an emotional, personality, or behavioral condition.

A “formal diagnosis of a disorder is not required for there to be a concern under [Guideline I].” Adjudicative Guidelines at ¶ 27. However, deceitfulness, chronic lying, and other behaviors that cast doubt on an individual’s judgement, stability, reliability, and trustworthiness only raise a security concern under Guideline I if they are “not covered under any other guideline” *Id.* at ¶ 28(a). In this case, the derogatory information relied upon by the LSO gives rise to a security concern under Guideline E. *Id.* at ¶ 16(b) (describing security concerns related to “providing false or misleading information; or concealing or omitting information concerning relevant facts to a[] . . . security official [or] competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination”). OHA has previously rejected security concerns asserted under Guideline I which are covered under another guideline. *See Matter of Personnel Security Hearing*, OHA Case No. PSH-12-0063 at 4 (2012) (resolving security concerns asserted under Guideline I because the concerns were covered under Guideline G). I reach the same conclusion in this case, and find that the LSO improperly asserted Guideline I.

Guideline J Concerns

The Individual’s lengthy history of arrests and citations for unlawful conduct raise significant security concerns under Guideline J of the Adjudicative Guidelines. An individual may mitigate security concerns under Guideline J if:

- (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(a)–(d).

The first and fourth mitigating conditions consider the individualized circumstances of each person to assess the likelihood that prior criminal conduct in which an individual engaged will recur. A common consideration in both mitigating conditions is the passage of time. In assessing whether sufficient time has passed to conclude that an individual is unlikely to engage in criminal conduct in the future, OHA has previously considered, among other things, how many allegations of criminal conduct are raised against an individual, whether criminal conduct is isolated to a particular period of an individual's life or is recurring, and the extent to which the individual displayed a pattern of repeating particular types of criminal conduct. *Compare Matter of Personnel Security Hearing*, OHA Case No. PSH-19-0030 at 9 (2019) (finding that the passage of two years without engaging in criminal conduct was insufficient to mitigate security concerns under Guideline J because the individual demonstrated a pattern throughout his adult life of engaging in similar criminal conduct even after periods of years without committing an offense), *with Matter of Personnel Security Hearing*, OHA Case No. PSH-19-0007 at 6 (2019) (finding that an individual's drug-related offenses occurred exclusively in his youth, that the individual's recent traffic violations were not related to the drug offenses and did not represent a pattern of criminal conduct, and that the passage of approximately twenty years was sufficient to mitigate the security concerns raised by the drug-related offenses).

In this case, the LSO identified 15 instances in which the Individual was arrested or cited for unlawful conduct. These offenses were not restricted to any particular period in the Individual's life, and in some cases the Individual refrained from engaging in unlawful conduct for years at a time only to reoffend. The Individual has displayed a pattern of alcohol-related offenses, even after completing counseling and promising to reform his behavior, which leads me to conclude that the passage of approximately one year since the Individual's third arrest for A-DUI is insufficient for me to conclude that the Individual is unlikely to engage in unlawful conduct in the future.

The Individual does not assert that he was coerced into committing unlawful conduct and there is reliable evidence in the record that the Individual committed the unlawful conduct asserted by the LSO. Thus, the second and third mitigating conditions are clearly inapplicable to this case. Therefore, I conclude that the Individual has not satisfied any of the mitigating conditions under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guidelines G and 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the

Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals