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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: December 4, 2019) Case No.: PSH-20-0018
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Issued: March 16, 2020

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (the Individual) for access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."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 be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In November 2018, the Individual reported to the local security office (LSO) that he had been arrested for Aggravated Driving Under the Influence of Intoxicating Liquor or Drug (A-DWI). Exhibit (Ex.) 11. In March 2019, the Individual reported to the LSO that he was arrested for DWI on January 7, 2019, and had entered a six-week in-patient alcohol treatment program the following day. Ex. 9.

The LSO recommended that the Individual undergo an evaluation by a DOE-contracted psychologist (DOE Psychologist). See Ex. 4 at 1. Following a clinical interview of the Individual, the DOE Psychologist issued a psychological assessment (Report) in which he concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 13 at 7. On December 3, 2019, the LSO issued the Individual a letter in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO

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."

explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted sixteen numbered exhibits (Ex. 1–16) into the record and presented the testimony of the DOE Psychologist. The Individual submitted fourteen exhibits (Ex. A–N) into the record and presented the testimony of seven witnesses, including his own testimony.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for denying the Individual a security clearance. Ex. 1 at 1–2.

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Summary of Security Concerns asserted that: the DOE Psychologist determined that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *DSM-5*; the Individual was arrested and charged with DWI on January 7, 2019; the Individual was arrested and charged with A-DWI on November 2, 2018; the Individual consumed alcohol in December 2018, in violation of the court-ordered terms of his release in connection with his November 2018 arrest for A-DWI; and, the Individual admitted to the DOE Psychologist that he engaged in binge drinking. Ex. 1 at 1–2. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, binge consumed alcohol to the point of impaired judgment, was diagnosed with AUD, Moderate, by the DOE Psychologist, and failed to follow a court order against consuming alcohol justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d), (g).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the other basis for denying the Individual a security clearance. Ex. 1 at 2. Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. *Id.* The Summary of Security Concerns listed as relevant facts: the Individual was arrested and charged with DWI on January 7, 2019; the Individual was arrested and charged with A-DWI on November 2, 2018; the Individual was arrested and charged with Failure to Comply/Criminal Mischief in 2015; the Individual was arrested on a bench warrant for Impersonating a Peace Officer in 2014; and, the Individual was arrested for Assault in the third degree in 1996. Ex. 1 at 2. The Individual’s criminal record 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.

IV. FINDINGS OF FACT

On November 6, 2018, the Individual reported to the LSO that he was arrested on November 2, 2018, and charged with A-DWI. Ex. 11. On November 13, 2018, the Individual submitted supplemental documentation indicating that law enforcement officers pulled him over while driving after he was observed leaving the scene of a vehicle crash. Ex. 10 at 1, 7. The Individual's breath alcohol concentration (BrAC) was measured at .25% and .24%. *Id.* at 7. An order of release provided with the supplemental submission indicated that a court had conditioned the Individual's release on his refraining from possessing or consuming alcohol, among other things. *Id.* at 5.

On March 5, 2019, the Individual reported to the LSO that he was arrested on January 7, 2019, and charged with DWI. Ex. 9 at 2. Supplemental documentation provided by the Individual indicated that the Individual's wife summoned law enforcement officers to the family home at approximately 7:35 A.M. in connection with a domestic dispute. Ex. 8 at 14. Law enforcement officers stopped the Individual when he attempted to drive away from the residence in his vehicle as they arrived. *Id.* The law enforcement officers observed a container of vodka on the seat of the Individual's vehicle and arrested the Individual after he was unable to complete a field sobriety test. *Id.* The Individual's BrAC was measured at .13% and .14%. *Id.* at 17.

The Individual was released from a detention center after his second DWI arrest and permitted to enroll in a six-week in-patient alcohol treatment program on January 8, 2019. Ex. 9 at 2. The Individual successfully completed the in-patient treatment program on February 15, 2019. Ex. B. The Office of Personnel Management (OPM) conducted a background investigation of the Individual. On March 6, 2019, an OPM investigator conducted an interview of the Individual under oath concerning the circumstances of his arrests for DWI. Ex. 16 at 60. During the interview, the Individual reported that, on the day of his November 2018 arrest for A-DWI, he consumed three

mixed drinks while working in his garage and then decided to drive to pick up a tool. *Id.* The Individual asserted that he “tapped another car’s rear bumper” while driving, the other car drove off, and he pulled over to check his own car. *Id.* The Individual believed that a third-party had called the police, and could not remember the results of the Breathalyzer test conducted after his arrest. *Id.*

The Individual reported to the OPM investigator that he consumed a 1.75 liter bottle of vodka over three days prior to his arrest for DWI in January 2019. *Id.* at 61. According to the Individual, a domestic dispute arose after his wife woke him up to go to work and he tried to leave after he realized that she had called the police. *Id.* The Individual expressed that he had volunteered to enter in-patient treatment after his arrest for DWI and that, upon release, he had moved in with his parents who would support his abstaining from alcohol. *Id.* The Individual reported that he was attending Alcoholics Anonymous (AA) meetings three to four times each week, intended to pursue counseling, and was “looking into” divorcing his wife. *Id.*

OPM obtained records of the Individual’s November 2018 arrest for A-DWI which contradicted the Individual’s statements during the interview with the OPM investigator. According to the records obtained by OPM, a caller contacted law enforcement after observing the Individual drive away from the scene of an accident. *Id.* at 77. Additionally, the records indicated that the Individual had told the arresting law enforcement officers that he left the scene of the accident because he did not “think it was that big of a deal” and denied having consumed alcohol. *Id.* at 78. The charges stemming from this incident were dismissed after the Individual’s defense counsel succeeded in suppressing the testimony of a key witness for the prosecution. *Id.* at 79; Ex. M.

The OPM investigation also identified criminal conduct by the Individual prior to his recent arrests for DWI. Law enforcement records obtained by OPM indicated that the Individual was arrested for Assault in 1996, Impersonating a Peace Officer in 2014, and Criminal Mischief in 2015. *Id.* at 71–72. In a 2014 personnel security interview by the LSO concerning his arrest for Impersonating a Police Officer, the Individual explained that he suspected a person of having stolen some of his tools, and so he called the person and said that his name “was Officer [last name omitted] and we [] suspect you broke into the garage last night and we’d like for you to return the [tools].” Ex. 15 at 18–20. According to the Individual, when confronted by a law enforcement officer with the illegal nature of his behavior he had “kind of chuckled [because he] was just tryin’ to [] shake the guy’s cage a little bit . . . [but] apparently the officer took it a little more seriously than [the Individual] had understood.” *Id.* at 24.

The DOE Psychologist met with the Individual for a clinical interview on May 24, 2019. Ex. 13 at 2. The Individual reported that he consumed alcohol moderately, and rarely to intoxication, until 2013 when he married his second wife. *Id.* at 3. From 2013 to 2018, the Individual reported that he consumed alcohol to intoxication twice each month on weekends. *Id.* In late 2018, as the marriage deteriorated, the Individual reported that his drinking increased significantly. *Id.* The Individual described his January 2019 arrest for DWI as “the worst day and the best day of [his] life because it got [him], an alcoholic, to change [his] life.” *Id.* at 5.

According to the Individual, he began abstaining from alcohol immediately after his January 2019 arrest for DWI when he was admitted into the six-week in-patient alcohol treatment program. *Id.*

The Individual reported happiness that he was resolving the problems alcohol had caused for him, but daily sadness due to being “painfully alone.” *Id.* at 7. In order to objectively assess the Individual’s alcohol consumption, the DOE Psychologist recommended that the Individual provide samples for Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) testing. *Id.* at 5-6. A medical doctor reviewed the results of the tests, and provided a letter to the DOE Psychologist indicating that both tests were negative. *Id.* at 10. According to the medical doctor, these negative test results were strong evidence that the Individual had not consumed alcohol for at least three days prior to the clinical interview and had not consumed alcohol on a regular, heavy basis for at least several weeks prior to the clinical interview. *Id.*

The DOE Psychologist concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, in early remission under the *DSM-5*. *Id.* at 6. The DOE Psychologist recommended that the Individual demonstrate his rehabilitation or reformation by abstaining from alcohol for at least twelve months and undergoing alcohol testing to demonstrate his abstinence, attending AA meetings and group counseling sessions on a weekly basis for twelve months, and meeting with a psychotherapist to address his sadness through coping mechanisms other than alcohol. *Id.* at 8.

V. HEARING TESTIMONY

At the hearing, a licensed professional clinical counselor (Individual’s Counselor) testified that the Individual had enrolled in an intensive outpatient treatment program (IOP) in April 2019 and successfully completed the program in September 2019. Tr. at 14–18; *see also* Ex. C (certificate memorializing the Individual’s completion of the program). The Individual’s Counselor explained that the IOP was a twenty-week program in which the Individual attended weekly group meetings and periodic one-on-one counseling with the Individual’s Counselor. Tr. at 15–17. The counseling focused on helping the Individual to understand the negative effects alcohol was having on his life, develop healthy coping skills, identify triggers that led him to consume alcohol, and establish a network of people to support his abstinence from alcohol. *Id.* at 17.

The Individual’s Counselor testified that he had observed significant progress on the part of the Individual in developing a lifestyle oriented around family and sobriety, and that he had no reason to believe that the Individual had relapsed since his arrest for DWI in January 2019. *Id.* at 20–22. The Individual’s Counselor indicated that the Individual was voluntarily continuing to attend group counseling, and was an active and supportive participant. *Id.* at 18–20. Based on his successful completion of the IOP, commitment to sobriety, and progress in establishing an effective support network, the Individual’s Counselor speculated that the Individual had an excellent prognosis for avoiding returning to problematic alcohol consumption. *Id.* at 20–21.

A psychologist employed at the facility at which the Individual is employed (Site Psychologist) testified that she had met with the Individual on an at least bi-weekly basis since February 2019 to manage the Individual’s treatment and provide him with supportive counseling. *Id.* at 30–31. According to the Site Psychologist, the Individual initially reported experiencing cravings and frequent triggers to consume alcohol, but those cravings and triggers were now significantly less frequent and the Individual was managing them well. *Id.* at 31–32. The Site Psychologist indicated that the Individual’s employer required him to undergo breath alcohol tests and EtG tests on an

approximately weekly basis, that she received the test results, and that the Individual had tested negative for alcohol on all of the tests since his last reported drink in January 2019. *Id.* at 32–33, 38–40; *see also* Ex. D (testing forms for the Individual’s breath alcohol tests); Ex. E (testing forms for the Individual’s EtG tests); Ex. N (listing each EtG test that the Individual took since February 25, 2019, all of which were negative for traces of alcohol).

The Individual’s AA sponsor testified that he agreed to act as the Individual’s AA sponsor after meeting the Individual through another AA participant approximately six months prior to the hearing. *Tr.* at 48. The Individual’s AA sponsor testified that he meets with the Individual on a weekly basis to discuss how he is applying the AA recovery steps, sees him in AA meetings on an at least weekly basis, and text messages him assignments to complete and requires the Individual to respond when he has completed the assignment. *Id.* at 49–50, 52. The Individual’s AA sponsor expressed that the Individual completes homework assignments consistently, is an active participant in AA meetings, and has embraced a lifestyle of sobriety. *Id.* at 51–52. The Individual’s AA sponsor speculated that the Individual would come forward if he relapsed, but asserted that he would recognize if the Individual had relapsed even if he did not come forward based on his experience as an AA sponsor, and indicated that he would intervene if he recognized the signs of relapse in the Individual. *Id.* at 52–53, 55–56.

Two supervisory co-workers in the Individual’s chain of command testified that they had observed changes in the Individual’s behavior at work since his second DWI in January 2019. *Tr.* at 64, 86; *see also* Ex. H (letter from the Individual’s manager expressing her opinion that he is a reliable employee who has demonstrated reformation); Ex. G (expressing the opinion that the Individual was effectively managing his problems with alcohol and had changed as a person). Both supervisory co-workers testified that in the past they had observed signs that the Individual’s alcohol consumption was affecting him at work, and that the Individual had tried to hide the extent of his alcohol consumption by calling out of work on mornings after binge consuming alcohol and using heavy amounts of cologne to hide the smell of alcohol. *Id.* at 65–66, 87. Both of the supervisory co-workers testified that the Individual had been forthcoming about seeking treatment for alcohol abuse and that he had told them that he intended to abstain from alcohol use indefinitely. *Id.* at 64, 88. One of the supervisory co-workers testified that the Individual was now a model employee. *Id.* at 63.

Another co-worker of the Individual testified that he was also recovering from problematic alcohol use and was part of the Individual’s support network. *Id.* at 75–77. The co-worker testified that he attended the same IOP as the Individual, and introduced the Individual to the local AA community. *Id.* at 75–76, 79–80. The co-worker testified that he sees the Individual nearly every day and that the two are in frequent contact. *Id.* at 74, 78. The co-worker testified that he had observed the Individual actively participate in AA meetings, including sharing with others, introducing himself to new people, and chairing meetings. *Id.* at 77. The co-worker testified that he believed that he would know if the Individual resumed drinking because the Individual would not be able to maintain their frequent contact if he was intoxicated, and that he would intervene to get the Individual back on track if he observed him relapsing. *Id.* at 78.

The Individual testified that he had abstained from alcohol since his second arrest for DWI in January 2019, and that he intended to continue to abstain from alcohol for the rest of his life. *Id.*

at 92, 106. The Individual testified that he now recognized that he is an alcoholic, and that alcoholism is a lifelong problem that he will have to confront on a daily basis. *Id.* at 93. The Individual explained that he was taking every appropriate step to support his abstinence from alcohol, including developing a support system through work and AA, continuing group counseling, disassociating from alcohol-using friends, and ending his marriage with his wife who would not commit to sobriety. *Id.* at 94–99.

The Individual described how he had learned that his triggers were related to anger, and recounted an instance in which he felt a strong urge to drink after sitting in bad traffic. *Id.* at 99. The Individual testified that he now recognizes these thoughts as a symptom of his condition and has learned to control them. *Id.* at 99–100. The Individual testified that he was working on Step 5 of the AA program and intended to continue attending AA meetings continuously in the future to support his recovery. *Id.* at 96–97.

With respect to his criminal record, the Individual attributed his DWIs to being in an “alcoholic mode,” said that he “hit [] bottom” after his second arrest, and indicated that the changes in his behavior would ensure that he would not commit similar offenses in the future. *Id.* at 92–93, 103, 110. The Individual expressed that his arrest for Impersonating a Peace Officer was the result of exercising poor judgment and that he had learned his lesson. *Id.* at 104–05. Regarding his arrest for Assault, the Individual testified that he had called the police due to an ex-wife physically assaulting him, that he had not committed the offense, and that he was never charged. *Id.* at 102.

The DOE Psychologist testified last after observing the entire hearing. The DOE Psychologist opined that the Individual’s Alcohol Use Disorder was now in full remission and that the Individual had demonstrated rehabilitation. *Id.* at 120, 124–25. The DOE Psychologist opined that the Individual had a “fairly good” prognosis, which he quantified as approximately seventy-five to eighty percent certainty, for avoiding returning to problematic alcohol consumption. *Id.* at 122. However, the DOE Psychologist cautioned that the Individual’s emotional personality put him at some risk of relapse. *Id.* The DOE Psychologist speculated that the Individual’s recognition of his triggers, newfound coping skills, and social support would be sufficient to help him abstain from alcohol going forward. *Id.* at 123–24.

VI. ANALYSIS

A. Guideline G

The Individual’s arrests for DWI, binge consumption of alcohol to the point of impaired judgment, diagnosis of AUD, Moderate, by the DOE Psychologist, and failure to follow a court order against consuming alcohol all raise security concerns under Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d), (g). The Individual did not challenge the allegations in the Statement of Security Concerns, but asserted that he had abstained from alcohol for over one year, had undergone treatment recommended by the DOE Psychologist, and was utilizing support mechanisms to support his continued abstinence from alcohol.

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).

I find that three mitigating conditions under Guideline G are applicable in this case. The Individual acknowledged his maladaptive alcohol use, both by describing himself as an “alcoholic” during the hearing and previously by explaining his situation to the witnesses who testified on his behalf that he was forthcoming about his problems with alcohol and need for treatment. The Individual also provided evidence that he is taking action to overcome this problem, including successfully completing the in-patient treatment program, going to counseling, actively participating in AA and obtaining a supportive AA sponsor, and developing a network of persons who will support him in his sobriety. Critically, the Individual also provided objective evidence that he has abstained from alcohol for over one year, as recommended by the DOE Psychologist, by undergoing frequent alcohol testing. For these reasons, I find that the Individual has met the second mitigating condition under Guideline G. *Id.* at ¶ 23(b).

The Individual is also continuing to actively participate in counseling, despite having completed the Individual's Counselor's twenty-week program, and has no previous history of relapsing after treatment. By the account of the Individual's Counselor, the Individual is making satisfactory progress, and is serving as a source of support to other attendees of the Individual's Counselor's group counseling sessions. Thus, I find the third mitigating condition under Guideline G applicable to this matter. *Id.* at ¶ 23(c).

Finally, the Individual successfully completed both the in-patient treatment program and the Individual's Counselor's program, and, as described above, has demonstrated a clear and established pattern of abstinence for over one year. The Individual's Counselor testified that the Individual's prognosis was excellent, and the Site Psychologist testified as to the progress the Individual has made during his time meeting with her. In addition, although the DOE Psychologist expressed reservations about the Individual's emotional nature presenting risks of relapse, the DOE Psychologist opined that the Individual had demonstrated rehabilitation and had a fairly good prognosis for avoiding relapsing into problematic alcohol consumption. Thus, I find that the Individual has satisfied the fourth mitigating condition under Guideline G. *Id.* at ¶ 23(d).

In light of the Individual's compliance with treatment recommendations, demonstrated abstinence from alcohol, development of a network to support his continued abstinence, and the positive testimony of three experts as to his prognosis, I am convinced that the Individual presents a very low risk of returning to problematic drinking and has resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline J

The Individual's arrests for DWI and prior arrest record raise security concerns under Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b). The Individual acknowledged the severity of his DWI offenses and asserted that he was not at risk of reoffending because he was abstaining from alcohol and would not resume drinking in the future. Tr. at 103. The Individual indicated that his impersonation of a law enforcement officer was an isolated lapse in judgment which would not reoccur, and that he had not committed the 1996 Assault identified by the LSO. *Id.* at 102, 104–05.

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).

In cases in which OHA Administrative Judges have determined that individuals' criminal conduct is the product of their abuse of alcohol, Administrative Judges have consistently measured whether "so much time has elapsed since the criminal behavior" under the first mitigating condition of Guideline J based on whether adequate time has passed for such individuals to meet treatment recommendations concerning their alcohol consumption. *See, e.g., Personnel Security Hearing, OHA Case No. PSH-13-0062 at 7 (2013) (finding that "once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated.")*.² In this case, I find that the Individual's DWIs are the direct product of his escalating problematic consumption of alcohol. As described above, I also find that the Individual has resolved the security concerns related to his alcohol consumption through treatment and over one year of abstinence from alcohol. Thus, I conclude that adequate time has passed since the Individual's DWIs, and that the DWIs happened under such circumstances, that they are unlikely to recur. Therefore, I find the first mitigating condition applicable to the Individual's DWIs. Adjudicative Guidelines at ¶ 32(a).

² Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

The other instances of criminal conduct cited by the LSO are also mitigated under Guideline J. Over twenty years have passed since the Individual's arrest for Assault without the recurrence of violent conduct, the Individual was not charged after his arrest, and the evidence in the record is inconclusive as to whether the Individual committed the offense. Accordingly, I find that the security concerns related to the Individual's arrest for Assault are resolved. *Id.* at ¶ 32(a), (c). With respect to the Individual's impersonation of a law enforcement officer, I find that the incident was an isolated lapse of judgment and that the passage of over five years since the offense is sufficient to mitigate the security concerns in light of the relatively minor nature of the offense. *Id.* at ¶ 32(a).

For these reasons, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline J of the Adjudicative Guidelines.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G and Guideline J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

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