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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 26, 2020 ) Case No.: PSH-20-0069  
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Issued: November 18, 2020

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> 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 May 4, 2019, the Individual was arrested for Driving Under the Influence (DUI). Ex. 16 at 1–2; Ex. 17 at 2. As a result, the Local Security Office (LSO) asked the Individual to complete a set of interrogatories. Ex. 14. After receiving the Individual’s responses to these interrogatories, the LSO requested that the Individual be evaluated by a DOE-contracted psychologist (the Psychologist), who obtained additional information from the Individual about her alcohol consumption. Ex. 11. After receiving the Psychologist’s Report, the LSO determined that unresolved derogatory information remained in the record which raised significant security concerns about the Individual. Accordingly, the LSO began the present administrative review proceeding on March 20, 2020, by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. The Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge in order to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

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<sup>1</sup> Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance.

The Individual requested a hearing, the LSO forwarded her request to the Office of Hearings and Appeals (OHA), and the Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, the Clinical Director (the Clinical Director) of the Early Intervention Program (EIP) attended by Individual, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-20-0069 (hereinafter cited as “Tr.”). The DOE Counsel submitted nineteen exhibits, marked as Exhibits 1 through 19. (hereinafter cited as “Ex.”). The Individual submitted nine exhibits, marked as Exs. A through I.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information raised security concerns under Guidelines G, I, and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Under Guideline G (Alcohol Consumption), the LSO cites the Individual’s DUI arrest and the Psychologist’s finding that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5) criteria for Alcohol Abuse Disorder (AUD). Ex. 2 at 2–3. This information adequately justifies the LSO’s invocation of Guideline G. The Adjudicative Guidelines state: “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.” Guideline G at § 21. Among those conditions that could raise a disqualifying security concern under Guideline G are “alcohol-related incidents away from work, such as driving while under the influence, . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder,” and “diagnosis by a duly qualified . . . psychologist . . . of alcohol use disorder.” Guideline G at §§ 22(a) and (d).

Under Guideline I (Psychological Conditions), the LSO cites the Psychologist’s conclusion that the Individual meets the DSM-5 criteria for Major Depressive Disorder (MDD), and that her current medication regimen and lack of sleep are risk factors for recurrence of her MDD. Ex. 2 at 5; Ex. 11 at 5. The Psychologist also concluded that the Individual has not engaged in effective treatment or evaluation of her AUD’s interaction with her MDD. Ex. 2 at 6; Ex. 11 at 5. These allegations adequately justify the LSO’s invocation of Guideline I. The Adjudicative Guidelines state: “[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness.” Guideline I at § 27. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness,” and “[f]ailure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition[.]” Guideline I at §§ 28(b) and (d).

Under Guideline J (Criminal Conduct), the LSO cites the Individual’s DUI arrest. “Criminal activity 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.” Guideline J at § 30. The Individual’s DUI arrest adequately justifies the LSO’s invocation of Guideline J.

### **III. REGULATORY STANDARDS**

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, 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 (9<sup>th</sup> 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 personal 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**

The Individual has a long history of major depressive episodes with a history of three suicide attempts. Ex. 11 at 5. However, her last suicide attempt occurred over 15 years ago, and her MDD symptoms have been under control for many years as a result of a successful medication regimen. Ex. A at 2. The Individual received a DOE security clearance on February 12, 2014, after fully disclosing her mental health history to the LSO. Ex. 15.

On May 4, 2019, the Individual was arrested for the DUI. Ex. 16 at 1–2; Ex. 17 at 2. Her blood alcohol concentration (BAC) at the time of her arrest was .213. Ex. 17 at 20.

#### **Psychological Evaluation**

After her DUI arrest, the LSO requested that the Individual undergo a psychological evaluation. The Psychologist interviewed the Individual on November 14, 2019, and issued a report of his findings on November 19, 2019, in which he opined that the Individual met the DSM-5 criteria for

AUD, and MDD.<sup>2</sup> Ex. 11 at 4-5. The Report indicated that the Psychologist based his AUD diagnosis upon the Individual's continued alcohol consumption against her doctor's advice. The Psychologist cited the danger of combining alcohol consumption with the Individual's five prescription medications, and the danger that continued alcohol consumption might interfere with the effectiveness of her MDD medications. Ex. 11 at 4. The Psychologist further opined that the Individual was consuming "alcohol on a regular basis and at times excessively." Ex. 11 at 5. The Psychologist was further concerned that the Individual was maladaptively using alcohol to address her social anxiety. Ex. 11 at 4.

The Individual reported to the Psychologist that she has experienced recurrent major depression and reported she has been prescribed three medications to treat her depression, and two medications for sleep deprivation. Ex. 11 at 3-4. She also reported she began experiencing sleep deprivation in 2010 with the birth of her child, and that she was still experiencing sleep deprivation. Ex. 11 at 3. At the Psychologist's request, the Individual completed the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI), which showed she had a major elevation on the social avoidance and interpersonal scales (relating to family problems), as well as clinical elevation on the cognitive scale of items related to sleep deprivation. Ex. 11 at 4. According to the MMPI results, the Individual did not exhibit any symptoms of depression. Ex. 11 at 4

The Psychologist reported that the Individual admitted that she did not realize she was impaired when she was operating her motor vehicle on the evening of her DUI. Ex. 11 at 2. The Individual admitted that she continues to use alcohol, explaining that she wants to continue using alcohol while socializing and stating that she does "not want depression to control my life and I want to be able to drink because it makes me feel good." Ex. 11 at 2. When the Psychologist informed the Individual that she should not consume alcohol because her sleep deprivation could make the use of alcohol more impairing, her response was a tearful acknowledgment that "she considered having fun with her friends around consumption of vodka to be an important part of feeling normal." Ex. 11 at 4. The Individual further admitted that her physicians had advised her not to consume alcohol with her medications; however, she interpreted this advice to mean that she should not use alcohol to excess while on her medications. Ex. 11 at 2, 4.

The Psychologist opined that the Individual's current medication regimen and sleep disturbances are risk factors for recurrence of her MDD. Ex. 11 at 5. He further opined that the Individual has not demonstrated evidence of change or rehabilitation of her AUD, since she "was not engaged in effective treatment or evaluation of her alcohol use and its interaction with her mental disorder."<sup>3</sup> Ex. 11 at 4-5. He noted that the Individual believes alcohol consumption is essential for improving

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<sup>2</sup> The Psychologist further expressed concerns about the Individual's "sleep deprivation" and the medication regimen prescribed by her psychiatrist to treat her MDD and her sleep disturbances. At the hearing, I found that the Psychologist, who has not been trained in medicine or professionally qualified to prescribe medication, did not have the qualifications to assess the appropriateness of the Individual's medication regimen. Tr. at 63.

<sup>3</sup> The Individual told the Psychologist that her attorney advised her not to get an alcohol abuse assessment and treatment evaluation until she obtained the analysis of her blood test for her DUI, because obtaining such an assessment could cause harm to her security clearance. Ex. 11 at 2.

her mood and her social identity. Ex. 11 at 4. The Psychologist recommended that the Individual obtain counseling, abstain from alcohol use, and obtain a new evaluation of her psychiatric medication regimen. Ex. 11 at 3–4.

### **Individual’s Exhibits**

In addition to her written response (Ex. A), the Individual submitted copies of letters prepared by the EIP counselor (the EIP Counselor) who evaluated and counseled her. Ex. B; Tr. at 12–13. The first of these letters, dated April 14, 2020, stated that on April 11, 2020, the Individual completed eight hours of Alcohol and Drug Information School, as part of the EIP. Ex. B at 1–2. The second letter, dated April 15, 2020, verified that the Individual completed an intake on April 15, 2020, and began participation in the EIP, which required that the Individual attend four individual sessions with her the EIP Counselor, abstain from alcohol use for the duration of the program, and undergo two random drug tests. Ex. B at 2-3. A third letter, dated May 27, 2020, verified that the Individual had completed the EIP, and had fully complied with all aspects of her treatment. Ex. B. at 4.

The Individual also submitted a letter, dated May 29, 2020, from her therapist, a Licensed Mental Health Counselor (the Therapist). The Therapist verified that the Individual initiated treatment with her on January 23, 2020, and that they addressed her history of depression, anxiety, and a sleep disorder during eight treatment sessions. Ex. C. The Therapist opined that these conditions, with the use of medications and monitoring by the psychiatrist (the Psychiatrist), have been stabilized for years. Ex. C. The Therapist noted that the Individual recognized that her judgment had lapsed on the date of her DUI. Ex. C. The Therapist asserted that the Individual is unlikely to repeat this lack of judgment, noting that she has been pro-active in her response to the DUI by attending of the EIP on her own volition, completing the EIP’s educational component, continuing treatment with the Therapist, and continuing treatment by the Psychiatrist. Ex. C.

The Individual submitted a letter from the Psychiatrist, dated July 14, 2020. Ex. D. The Psychiatrist stated that the Individual has been treated for “emotional issues for several years.”<sup>4</sup> Ex. D. He opined that she is “stable to work” and has been very compliant with treatment recommendations. Ex. D. He also noted that he continues to monitor and treat her mood disorder. Ex. D.

The Individual also submitted data from her fitness watch from August 31, 2020, through September 29, 2020, tracking the hours of sleep she has each night.<sup>5</sup> Ex. H.

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<sup>4</sup> The Psychiatrist did not provide a specific DSM-5 diagnosis or indicate when the Individual had begun treatment with him, however.

<sup>5</sup> The Individual also submitted highly positive written character references from her ex-husband, and her former supervisor who has served as the Chief Operating Officer at the Individual’s employer. Ex. E; Ex. F. The Individual further submitted an Outstanding Performance Award dated November 2019, and annual performance reviews from 2017, 2018, and 2019. Ex. G; Ex. I. Her performance reviews for each year from 2017 through 2019 consistently state that the Individual is a very high-performing employee. Her overall performance rating for 2019 was

## **The Hearing**

### **The Clinical Director's Hearing Testimony**

The Clinical Director testified that the Individual was assessed by the EIP Counselor on April 1, 2020. Tr. at 12–13. He stated that the assessment was conducted for the court, in conjunction with the Individual's DUI. Tr. at 17. The Clinical Director testified that, based on his review of her assessment and the evaluation materials, the Individual did not meet the DSM-5 diagnostic criteria for a substance abuse disorder. Tr. at 13, 21. He testified that, because he is a substance abuse professional, rather than a mental health counselor, he could not assess her mental health, or consider it when reaching his diagnostic conclusions. Tr. at 17. The Clinical Director also testified that the Individual completed a total of 12 hours of education consisting of an 8-hour alcohol information and educational course, and four individual sessions. Tr. at 15. He confirmed that the random drug and alcohol tests administered to the Individual during the EIP were all negative. Tr. at 19. He testified that, based on the Individual's successful completion of the EIP, and the EIP Counselor's conclusion that the Individual did not meet the DSM-5 criteria for a substance use disorder, the EIP had no further treatment recommendations for the Individual. Tr. at 19. He also opined that, based on his experience doing thousands of assessments and the Individual's expedient and successful completion of the EIP, he expects that the Individual will not repeat the behaviors that resulted in her DUI. Tr. at 20.

### **The Individual's Hearing Testimony**

The Individual testified that, after her DUI, she abstained from alcohol for three weeks, but then had "a couple of drinks with [friends]" on one occasion at her house. Tr. at 35. She stated she did not recall telling the Psychologist that she consumes alcohol because it makes her "feel good." Tr. at 36. Regarding her alcohol use and its interaction with depression, she stated:

I have worked very, very hard to not let depression control my life and to be able to live a full life without complications from depression....If I wanted to socialize with my friends, ...[and] I wanted to have a drink at dinner, I do not believe that that is going to have a major effect on my depression.

Tr. at 36. She further admitted that she has been consuming alcohol since completing the EIP. Tr. at 36–37, 43, 50. She also admitted that she "will probably have a drink in the future but it is going to be...not frequent and not much at all." Tr. at 43. She also testified that she now tries to limit her alcohol use to two alcoholic drinks at any one time. Tr. at 50.

Regarding her psychological conditions, the Individual testified that she began seeking treatment with her the Therapist in January 2020, after her clearance was suspended, because she was experiencing depression and stress. Tr. at 40-41. She currently sees the Therapist once per month

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"Outstanding." Ex. I at 3–4. Similarly, her performance rating for 2018 was "Outstanding" and her performance rating for 2017 was "Exceeds Expectations." Ex. I at 5, 8.

regularly, with increased frequency as needed. Tr. at 40–41. The Individual stated that, while there will always be times when she will feel depressed, she has succeeded in controlling her depression by taking her medication regularly, attending counseling, and having a good support network. Tr. at 45–46. She further testified that, while she has experienced sleep deprivation in the past, she has recently been getting 6 to 7 hours of sleep per night, which she finds is satisfactory, and that the Psychiatrist is treating her sleep disorder. Tr. at 31–33.

The Individual is under the care of the Psychiatrist, who she sees once every three months primarily for medication monitoring. Tr. at 30. She currently takes four prescription medications regularly, including an antidepressant, a medication to increase the antidepressant's effectiveness, and two medications for her sleep disorder Tr. at 29. She also takes another medication to treat anxiety, but she only uses it as needed, and has not used it recently. Tr. at 107. She asserted that the Psychiatrist never warned her against alcohol consumption. Tr. at 31. She admitted that, in the past, some of her treating physicians have advised her not to consume alcohol with her medication, but testified that she is not aware if this advice applies to her current medications. Tr. at 48. She further admitted that her doctors have advised her that, "Using alcohol with my history of depression is a concern if the alcohol becomes a problem and I use it as self-medication." Tr. at 49. However, she claimed that she does not remember any of her treating therapists recommending that she should abstain from alcohol use. Tr. at 50. She testified that her interpretation of her physicians' advice against alcohol use was that she could still engage in moderate or infrequent alcohol use without intoxication. Tr. at 37. She explained that, although the Psychologist recommended that she abstain from alcohol use, she "does not know if his opinion is valid," since he does not prescribe medication. Tr. at 39.

### **The Psychologist's Hearing Testimony**

The Psychologist testified that he diagnosed the Individual with AUD, Mild. Tr. at 104. He applied the criteria set forth in the DSM-5, noting that she met at least two of the DSM-5 AUD criteria, since her "alcohol is often taken in larger amounts over longer periods than was intended," and her "alcohol use has continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol." Tr. at 102, 104. Tr. at 103-104. He explained that the Individual's use of alcohol when she has MDD and a sleep disorder, combined with her misuse of alcohol to manage her social anxiety, raises significant concerns.<sup>6</sup> Tr. at 100-101, 104.

When asked if the Individual is exhibiting current symptoms of MDD, the Psychologist responded in the affirmative, but did not provide specific examples of those symptoms. Tr. at 97. Instead, he

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<sup>6</sup> The Psychologist also testified that he spoke to the Individual about her anxiety issue, and in one of her responses, she stated that she was consuming alcohol due to anxiety. Tr. at 93; *see* Ex. C. The Psychologist opined that highly socially anxious people tend to have a higher rate of alcohol use as a tranquilizer. Tr. at 93–94. He also expressed his concern that the Individual states she will continue to drink alcohol once a month, and believes she could drink moderately while taking her medications despite having a sleep disturbance. Tr. at 90, 92–93.

stated, “I just have to take what I know about her ongoing lifelong major depression bordering bipolar disorder with the medications that she's on, her day-to-day subjective experience, and then, also, my diagnosis of her having anxiety disorder which she didn't get into as a complicating factor in her social decisions including her work, so, yeah.” Tr. at 97. He also concluded that she has current symptoms of her sleep disorder because, despite her testimony that she is getting approximately 6 to 7 hours of sleep per night, she continues to need sleep medications.<sup>7</sup> Tr. at 87–88, 99.

## **ANALYSIS**

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.

Guideline G at § 23(a)-(d).

The Individual has provided some evidence of actions taken to address her DUI by obtaining a court ordered assessment, by completion of the educational component of her EIP, and by attending individual counseling sessions as part of the EIP. However, despite the Psychologist's (and other health care providers') recommendations to abstain from alcohol use, she continues to use alcohol, and intends to do so in the future. For these reasons, the Individual has not yet been sufficiently reformed and rehabilitated from her AUD<sup>8</sup> to resolve the security concerns raised under Guideline G.

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<sup>7</sup> Moreover, the Psychologist testified that he does not know how accurate the individual's fitness watch is in measuring sleep, so he has not placed any value on the data from it showing that she has recently been getting 6 to 7 hours of sleep per night. Tr. at 87.

<sup>8</sup> While the Clinical Director testified that his clinic's evaluation of the Individual did not support a diagnosis of AUD under the DSM-5, he did not fully elaborate on his basis for this conclusion, and did not appear to consider the



Since the Individual had most recently consumed alcohol one month prior to the hearing, I cannot conclude that “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.” Guideline G at § 23(a). Moreover, her future intent to continue to use alcohol casts doubt as to whether the behavior that led to her DUI is unlikely to recur. Therefore, I find that the Individual has not established sufficient mitigation under § 23(a) to resolve the security concerns raised under Guideline G in this case.

While the Individual has made some efforts to moderate her alcohol use, she has not shown that she understands that she is engaging in maladaptive alcohol use, and the potential danger posed by her continued alcohol use. While her Counselor reports that the Individual admits she had a lapse of judgment on the one occasion of her DUI, the Individual does not recognize that she has AUD. Instead, she continues to use alcohol, despite: (1) having been informed that alcohol may interact with her medications in a physically hazardous manner, and might interfere with the effectiveness of her MDD medications, (2) the concern, raised by the Psychologist (and perhaps by her Psychiatrist) that her continued alcohol use raises the likelihood that her MDD may recur, and (3) the threat to her employment posed by her continued alcohol use. Accordingly, the Individual has not shown sufficient mitigation under § 23(b).

The Individual is not currently participating in any alcohol treatment program. While she currently participates in counseling once every month, a letter from the Therapist explains that she is being treated for her history of depression, anxiety, and a sleep disorder, rather than being treated for AUD. However, as stated above, the Psychologist diagnosed the Individual with AUD, and recommended that she seek counseling to address not only her psychological conditions but to also address and resolve the interaction between the Individual’s AUD and her MDD, anxiety, and sleep disorder. Since the Individual has not resolved these issues, he opined that the Individual has not presented adequate evidence of change or rehabilitation of her AUD. The Psychologist’s opinion is supported by the Individual’s testimony and disclosure to the Psychologist that she uses alcohol on social occasions so that depression does not control her life, and that consuming an alcoholic beverage at dinner with friends, albeit in moderation, does not impact her depression and allows her to feel normal. Accordingly, I find that the Individual has not established sufficient mitigation under § 23(c) to resolve the security concerns raised under Guideline G in this case.

The Individual’s EIP, which she successfully completed, provided the Individual with a substance abuse assessment, an alcohol education course, and four individual sessions with the EIP Counselor. The Clinical Director did not recommend an aftercare program, and concluded that the Individual does not meet the criteria for AUD; however, he acknowledged that, because he was not a mental health counselor, he did not factor in the Individual’s mental health history when forming his conclusion. By contrast, the Psychologist convincingly testified that the Individual’s psychological conditions are relevant to a diagnosis of AUD, because continued alcohol use despite having a persistent or recurrent psychological problem is one of the DSM-5’s diagnostic criteria for AUD. Moreover, while the Individual demonstrated temporary abstinence during the EIP, she resumed consumption of alcohol after the program ended, and thus has not demonstrated

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significance of the fact that the Individual was using alcohol in a physically hazardous manner by consuming it while she was taking certain medications, or the possibility that her alcohol use could aggravate her MDD. Tr. at 16-19.

sufficient abstinence or a pattern of modified consumption. Accordingly, I find that the Individual has not established sufficient mitigation under § 23(d) to resolve the security concerns raised under Guideline G in this case.

### **Guideline I Concerns**

The Psychologist's opinion that the Individual's major depressive disorder, sleep disorder, and anxiety issues may impair her judgment, stability, reliability, or trustworthiness, raise security concerns under Guideline I. However, an Individual may mitigate security concerns under Guideline I if:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Guideline I at § 29(a)–(e). Two of the above mitigating factors are applicable in the instant case.

The Individual provided a written statement from the Psychiatrist in which he opined that “she has been very compliant with treatment recommendations, and is stable to work.” Ex. D. He verified that the Individual will continue to follow his treatment, and that he will assist her with her mood issues. The Individual also testified that she continues to see the Psychiatrist every three months, and the Therapist provided a letter confirming that the Psychiatrist regularly monitors her psychotropic medications. The Therapist stated that the Individual's depression, anxiety, and sleep disorder have been stabilized for years with the combination of prescribed medication and the Individual's treatment with the Psychiatrist. On these facts and evidence, I find that the Individual has established sufficient mitigation under § 29(a).

The Individual initiated treatment with the Therapist in January 2020, and continues to receive treatment from the Therapist once per month for her history of depression, anxiety, and a sleep disorder. The Therapist provided a written statement in which she opined that the Individual's issues have been stabilized for several years with the assistance of psychotropic medication and treatment by the Psychiatrist. The Therapist indicated that the Individual's increased use of alcohol

due to experiencing anxiety during a social occasion led to her DUI. The Therapist stated her belief that the Individual would not repeat a similar incident in the future. The Psychiatrist, however, noted that the Individual only recently began attending counseling, after discontinuing counseling therapy a long time ago. However, the Psychiatrist's testimony did not provide specific examples to support his conclusion that the Individual was experiencing active symptoms of MDD. Given that the Individual's previous suicide attempts occurred over 15 years ago, and the supportive letters from the Individual's Counselor and the Psychiatrist both provide a favorable prognosis, I find that the Individual has established sufficient mitigation under § 29(b).

For the reasons set forth above, I find that the Individual has provided sufficient evidence to resolve the security concerns raised under Guideline I.

### **Guideline J Concerns**

The Individual's alcohol-related arrest raises 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 Individual's criminal activity concerns are inextricably linked to her AUD. Until the Individual is rehabilitated or reformed from her AUD, the root cause of her criminal activity remains unaddressed. Therefore, the Individual has not met the mitigating condition set forth at § 32(a).<sup>9</sup> Nor does the Individual meet the mitigating factors set forth at § 32(d) since, as discussed above, she has not sufficiently established that she has been rehabilitated or reformed from the AUD. Since the Individual's AUD has resulted in criminal activity, I cannot be certain that the Individual will refrain from further criminal activity, unless she is rehabilitated or reformed from her AUD. Because the Individual has not satisfied any of the mitigating conditions under Guideline J, I find that the security concerns raised under Guideline J in the Statement of Charges have not been resolved.

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<sup>9</sup> The mitigating conditions set forth at § 32(b) and § 32(c) are clearly inapplicable, because the Individual does not contest her arrest for DUI and has not produced any evidence indicating that she was pressured or coerced into driving while intoxicated.

## V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G, I, and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has mitigated the security concerns raised under Guideline I, but has not mitigated the security concerns raised under Guidelines G and J. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals