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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: March 17, 2021)	Case No.: PSH-21-0030
)	
_____)	

Issued: June 17, 2021

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXX (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 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 denied.

I. BACKGROUND

The Individual, an applicant for a DOE Security Clearance, signed and submitted a Questionnaire for National Security Positions (QNSP) on March 3, 2016. Ex. 9. The United States Office of Personnel Management’s (OPM) Investigation Services investigated the Individual and issued a report of its findings on January 29, 2018. Ex. 11. In conjunction with this report, a Personnel Security Specialist (Specialist) conducted an interview of the Individual on July 30, 2018. Ex. 10. Based on the information provided, the Local Security Office (LSO) requested that the Individual be evaluated by a DOE-contracted Psychologist (DOE Psychologist), who subsequently issued a report of his findings (Report). Ex. 7. The Local Security Office (LSO) determined that unresolved derogatory information existed that raised significant security concerns about the Individual. Accordingly, the LSO began the present administrative review proceedings on February 20, 2020, by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The

¹ 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

Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

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, and I conducted an administrative hearing pursuant to 10 C.F.R. § 710.25(e). The LSO submitted eleven exhibits, marked as Exhibits 1 through 11, and offered the testimony of the DOE Psychologist. The Individual submitted twelve exhibits, marked as Exhibits A through L, and offered the testimony of six witnesses including himself.²

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 substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines G 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). The LSO further cites the Bond Amendment, codified at 50 U.S.C. § 3343, in support of its conclusion that the Individual is ineligible for a security clearance.

Under Guideline G (Alcohol Consumption), “[e]xcessive 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work, such as driving while under the influence[,]” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder.” *Id.* at ¶¶ 22(a), (d). With respect to Guideline G, the LSO alleged that (1) the DOE Psychologist diagnosed the Individual was Substance Use Disorder (SUD), moderate to severe, not in remission, without adequate evidence of rehabilitation or reformation; (2) During his interview with the OPM investigator, the Individual admitted to consuming three to four beers twice a week to daily from March 2015 to June 2017, increasing his use to six or seven beers on the Saturday evenings, and only being able to go a week without alcohol; (3) Despite the fact the Individual's physician instructed him to reduce his alcohol consumption in October 2017, the Individual continued to consume two to three beers two to seven times per week between October 2017 and May 2018; (4) From 1986 to 2008, the Individual was charged with a number of alcohol related offenses. Ex. 1 at 1-3.

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person's judgement, reliability, and trustworthiness. By its very nature, it calls into question a person's

² The Individual submitted two Employee Appraisals, from March and December 2020, indicating he received a “Fully Meets Expectations” rating. Ex. E; Ex. F. An April 13, 2021 email provides that despite the Individual's years of employment, his personnel file contains only the two appraisals. Ex. G. He also provided two Logistics Spot Awards from 2019 and 2020. Ex. Ex. C; Ex. D.

ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. The conditions that could raise a security concern and may be disqualifying under Guideline J include: “[a] pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness, and evidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” Guideline J at ¶ 31(a)-(b). The LSO alleges that from 1986 to 2015, the Individual was charged with a number of criminal offenses. Ex. 1 at 3-5.

As stated above, the Notification letter also cites the Bond Amendment. The Bond Amendment states, in pertinent part, that an agency may refuse to grant or renew a security clearance for an individual who “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than one year.” 50 U.S.C. § 3343(c)(1)(A). The Individual was sentenced to one year and eleven months and served prison time from June 2008 through May 2010 after being convicted of Accident Involving Damage to a Vehicle, Failure to Stop, Leaving Scene, and felony Warrant for Probation Violation stemming from a 2003 Driving Under the Influence (DUI) offense. Ex. 1 at 1.

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 or 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 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. Adjudicative Guidelines at ¶ 22(a), (c)-(d).

IV. FINDINGS OF FACT

The Individual does not challenge the basic facts listed in the Notification Letter; namely, that from 1986 to 2015, he was charged with a number of criminal offenses, the majority of which were alcohol related, such as DUI, and in June 2008, he was convicted of Accident Involving Damage to Vehicle, Failure to Stop, Leaving Scene, and felony Warrant for Probation Violation stemming from a 2003 DUI, resulting in over a year of incarceration. Ex. 9 at 50-51; Ex. 10 at 62-64; Ex. 11 at 82-89.

A personnel security interview was conducted by a Specialist on July 30, 2018. Ex. 10. During the interview, the Individual told the Specialist that he believes he has been an alcoholic his “whole life,” and continues to consume alcohol as he feels he has become physically dependent. Ex. 10 at 234. The Individual was abstinent during his period of incarceration, but gradually resumed his alcohol consumption upon his release in 2013. Ex. 10 at 112. From March 2015 to 2017, he began consuming approximately three to four beers in a span of three hours from twice a week up to daily consumption. He also reported possibly consuming six or seven beers over four hours on the weekends but occasionally abstaining for up to a week. Ex. 10 at 128-31. In June 2017, the Individual reduced his alcohol consumption to approximately two beers twice a week, increasing the amount on Saturdays to approximately three beers. Ex. 10 at 133-34. Notably, in October 2017, the Individual’s primary care physician instructed him to abstain from alcohol consumption entirely. Ex. 10 at 108, 136-38. It was upon receiving this recommendation that the Individual began limiting himself to a maximum of three beers a day. Ex. 10 at 137-39. At the time of the interview, the Individual indicated that he was consuming approximately two beers about two to seven nights a week, limiting himself to a total of three beers. Ex. 10 at 98-107, 112, 143

The Individual denied operating a vehicle in an impaired state since 2003, denied having ever reported to work in a hungover state or failing to report to work due to intoxication. Ex. 10 at 154-57, 159. He also denied consuming alcohol while at work, being questioned about his drinking habits by anyone at work or testing positive for alcohol in a randomized alcohol test at work. Ex. 10 at 160, 162. He stated that he purchases beer “a couple times a week,” usually purchasing a twelve-pack at a time. Ex. 10 at 158. The Individual also confirmed that he attended AA classes during his probationary period following his incarceration, but never started work the 12 steps of the AA program and did not obtain a sponsor. Ex. 10 171-73.

Pursuant to the LSO’s request, the Individual underwent a psychological evaluation.³ Ex. 7. The resulting November 17, 2018 report noted that the Individual was charged with five DUIs from ages twenty-three to twenty-nine, and “from age [twenty] to about [ten] years ago, [the Individual] incurred [twenty] legal infractions, most of which involved his use of alcohol[.]” Ex. 7 at 1-2. The report also indicated that the Individual made “several unsuccessful attempts to moderate his consumption[.]” and “while he is exercising some control over his alcohol consumption, he

³ The DOE Psychologist’s evaluation of the Individual included two laboratory tests, an Ethyl Glucuronide (EtG) and a Phosphatidylethanol (PEth) test, both of which were positive. Ex. 7 at 6. The EtG urine test detects alcohol up to 80 hours after any alcoholic beverage is consumed. The PEth test detects alcohol use during the previous 28-days. *Id.* The Individual has submitted negative EtG and PEth tests from April 21, 2021 and April 26, 2021, respectively. Ex. A; Ex. B.

remains dependent on it.” Ex. 7 at 3-4. The report noted that Individual attended court-ordered classes pertaining to alcohol awareness, a twenty-one day, voluntary inpatient treatment program in 2008, and an aftercare program that the Individual attended once a week for one month. Ex. 7 at 5. From 2004 to 2008, the Individual attended AA meetings twice a week. Ex. 7 at 5. The DOE Psychologist diagnosed the Individual with SUD, moderate to severe, not in remission, and indicated the Individual has not demonstrated adequate evidence of rehabilitation or reformation. Ex. 7 at 8. Further, it was recommended that the Individual remain abstinent from alcohol for twelve months and provide proof of such, since he is not a candidate for engaging in controlled consumption, He also recommended that the Individual participate in a group like AA, work on the 12 steps with a sponsor and address his depression by engaging the services of a psychiatrist. Ex. 7 at 8.⁴

The Individual underwent four psychological tests conducted by a psychologist he engaged (Individual’s Psychologist) in April 2021, the findings of which were compiled into reports. Ex. I; Ex. J; Ex. K; Ex. L. The Individual’s Psychologist noted that the Individual did not report any “significant problems with alcohol or drug abuse or dependence.”⁵ Ex. I at 7. Ex. I at 8. A Substance Abuse Subtle Screening Inventory (SASSI) indicated a low probability of having a substance dependence disorder. Ex. J. However, one report attributed to the Individual’s Psychologist indicates that the Individual “has experienced recurring episodes of an alcohol use disorder[,]” and notes that “[c]linical syndromes are suggested...in the area of Alcohol Use Disorder.” Ex. L at 2, 6-7.

The Hearing

The hearing began with the testimony of four character witnesses, the Individual’s colleagues and friends. All of the Individual’s witnesses, including his supervisor, denied having ever smelled alcohol on or about the person of the Individual, having seen the Individual consume alcohol while at work, having seen the Individual report to work in a hungover state, having heard the Individual state he was intoxicated the weekend or night before reporting to work, or having ever heard the Individual discuss plans to become intoxicated or consume alcohol. Tr. at 16-17, 24-26, 36-37. Further, all of the witnesses acknowledged that they were informed of the Individual’s prior alcohol-related incidents, arrests, convictions, and prison term. Tr. at 17, 26, 38. The witnesses provided further testimony regarding the Individual’s good judgement, reliability, trustworthiness, his ability to follow rules and regulations, and ability to protect sensitive information. Tr. at 17-18, 26-27, 38-39, 49-50. The Individual’s neighbor testified that prior to approximately December 2017, they would share beers on the weekend, and in 2018, the Individual’s alcohol intake increased, as he was grieving the loss of a family member and partner. Tr. at 46-47. His neighbor

⁴ Regarding the Individual’s depression, the DOE Psychologist noted that “[s]uccessfully addressing his depression will certainly support his abstinence. Ex. 7 at 8.

⁵ The report in Exhibit I indicates that some of the Individual’s responses may not have been entirely forthright, and that “he tends to portray himself as being relatively free of common shortcomings to which most individuals will admit[.]” Ex. I at 6. Accordingly, the report suggests that “the interpretive hypotheses in [the] report should be reviewed with caution.” Ex. I at 6.

went on to state that after November 2018, they began limiting themselves to sharing a six-pack of beer on Saturdays. Tr. at 47-48.

In his testimony, the Individual confirmed that his first alcohol-related charge, a DWI, occurred in 1986, and that alcohol became a “problem” for him in the years that followed. Tr. at 61. His last alcohol-related incident was in 2008, and that was the last criminal incident, outside of traffic incidents, with which he was charged. Tr. at 61-62. After the November 2018 evaluation with the DOE Psychologist, the Individual reduced his alcohol consumption from a nearly daily basis to an event that usually took place on Saturday nights, limiting himself to three beers, which was approved of by his personal physician. Tr. at 64-65. He discontinued his consumption of alcohol entirely around March 2021, and testified that he not only no longer feels dependent on alcohol and that he no longer misses alcohol. Tr. at 66. The Individual admitted that he used to drink to deal with stress but has since employed other methods by which to cope, those which he learned in a therapeutic community in prison. Tr. at 67-69. The Individual does not intend to resume consuming alcohol in the future, and prison taught him that things like rules and regulations apply to him as well. Tr. at 71. He further testified that he completed an inpatient treatment program for alcohol in January 2008 prior to being incarcerated, and continued treatment while in prison. Tr. at 76-77. He admitted that he has not participated in AA or any similar program since his release in 2010 and attributed his sobriety to his desire to keep his current position of employment. Tr. at 79-80. Although he was sober for approximately thirty months after being released from prison, he resumed drinking, stating that “it kind of happened again.” Tr. at 88-89.

He testified that when he received and read the DOE Psychologists recommendations in July 2020, he felt he was complying with the recommendation to abstain, as he had already reduced his alcohol consumption. Tr. at 81-82. When confronted with the DOE Psychologist’s statement that the Individual is not a candidate for controlled drinking, the Individual stated that “he wasn’t aware he had to[.]” comply with that particular recommendation. Tr. at 82. In the period immediately preceding his evaluation with the DOE Psychologist, the Individual was drinking approximately a six-pack of beer daily. Tr. at 88. When asked if he has support, as he has chosen not to participate in a program like AA, the Individual stated, “I must be a unique person because I don’t need any.” Tr. at 85. In later testimony, the Individual confirmed that in the past, he had previously attempted to reduce or control his alcohol consumption but would ultimately resume consuming alcohol “after a week or so.” Tr. at 91-92.

The Individual’s Psychologist, having administered four tests on April 14, 2021, did not “see anything that would raise questions about [the Individual’s] judgement, reliability, stability, or trustworthiness[.]” Tr. at 99-102. He also determined that the Individual’s mood had improved since the DOE Psychologist’s evaluation, as the Individual had “gone through the grieving process[.]” and noted that the Individual is not clinically depressed. Tr. at 102. Based on the evaluation conducted in April 2021, the Individual’s Psychologist does not believe the Individual has an alcohol use disorder or habitually or binge consumes alcohol to the point of impaired

judgement. Tr. at 104.⁶ Further, he opined that the Individual does not have a substance use disorder, as there is adequate evidence of rehabilitation or reformation. Tr. at 109-10. He stated that the most common way individuals discontinue their consumption of alcohol is just “decid[ing] to stop.” Tr. at 106-08, 120-23.⁷ Further, if the Individual resumed drinking alcohol in the future, it would not necessarily mean that the Individual has a substance abuse disorder, as “[t]here are plenty of people who can engage in controlled drinking.” Tr. at 108-09. The Individual’s prognosis was described as “quite good.” Tr. at 110, 112. In later testimony, the Individual’s Psychologist confirmed that the test results indicate that “alcohol use disorder [is] a possible clinical syndrome” with which to diagnose the Individual, but qualified this by stating that because the Individual had alcohol use disorder in the past, the test reflects this reality. Tr. at 116-17.

In direct contradiction to the testimony provided by the Individual’s Psychologist, the DOE Psychologist stated he has neither heard anyone state nor has he seen any research support the proposition that “most people just stop drinking” without any support or treatment. Tr. at 132-33, 135, 151-53.⁸ The DOE Psychologist further stated that if an individual has remained abstinent for a “year or two[,]” then “they no longer deserve that diagnosis [but the] DSM does not allow us to say that technically[.]” Tr. at 136. He did state that the definition for remission is clear, in that the Individual must not meet any of the diagnostic criteria for one year. Tr. at 137. The DOE Psychologist acknowledged that the Individual is in remission, but that based on the Individual’s history and the fact the Individual has been abstinent for only two months, he “cannot have a lot of confidence that [the Individual] can sustain this.” Tr. at 138-39, 142-43.⁹ While the Individual has been sober for two months, the DOE Psychologist testified the Individual would need to show six to twelve months of abstinence before he would feel comfortable stating the Individual has been rehabilitated. Tr. at 147-48. Although the DOE Psychiatrist acknowledged that the Individual would not do well in an AA type of setting, he would do well to have a sponsor or alcohol counselor. Tr. at 141. The DOE Psychologist reiterated his recommendation that the Individual permanently abstain from alcohol consumption, treat his underlying depression, which he felt extended beyond the grieving process, but amended his recommendation that the Individual participate in AA, and instead, work with a counselor for at least six months. Tr. at 143-45.

⁶ DOE Counsel asked the Individual’s Psychologist how he determined the Individual no longer has a diagnosis when “there is no formal endpoint” to an alcohol related diagnosis made pursuant to Diagnostic and Statistical Manual of Mental Disorders (DSM-5). 112. The Individual’s Psychologist conceded that there is no formal endpoint to such a diagnosis but went on to state that prior to his two months of sobriety, the Individual was consuming alcohol “well within acceptable social limits[.]” Tr. at 112-14. He concluded responding, “I say he doesn’t [have a diagnosis]. The DSM says he does. I will leave you with that.” Tr. at 115.

⁷ The Individual’s Psychologist also testified that when the efficacy of treatment programs is examined, we are brought to the conclusion that “the majority of people stop on their own[,]” and that in general, “people recover without going to a formal program.” Tr. at 123, 127-29.

⁸ The DOE Psychologist stated that although treatment may not be such a successful endeavor, it is important. He provided statistics and examples indicating that treatment resulted in lower rates of relapse. Tr. at 151-52.

⁹ Although the DOE Psychologist felt it likely that the Individual would remain sober for the next year, he was less confident the Individual would remain sober two years on. Tr. at 142-43. Further, the Psychologist testified that although he recommended one year of sobriety, he would prefer to see eighteen months of sobriety. Tr. at 149.

V. ANALYSIS

A. Guideline G (Alcohol Consumption)

The DOE Psychologist's diagnosis of the Individual with SUD, moderate to severe, not in remission, without adequate evidence of rehabilitation or reformation, reported levels of alcohol consumption, and history of alcohol related offenses raise concerns under Guideline G. 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).

While I appreciate the fact that the Individual had remained abstinent for approximately two months at the time of the hearing, submitted negative PEth and EtG test results from April 2021, and voiced his desire to remain abstinent regardless of his clearance status, I cannot find that the Individual has mitigated the Guideline G concerns. Perhaps most concerning is the fact the Individual identified himself as an alcoholic but did not find it necessary to implement the DOE Psychologists recommendations, which directly addressed the Individual's maladaptive alcohol use. Ex. 10 at 234.¹⁰

The mitigating condition set forth at § 23(a) is not present. As an initial matter, the Individual had only begun his journey into sobriety at the time of the hearing, completing approximately two months of the recommended twelve months. Further, the record is clear that the Individual engaged in maladaptive alcohol use on a regular basis over an extended period of time, and he has failed to show that his maladaptive alcohol use is unlikely to recur because he has failed to seek treatment or support, as recommended by the DOE Psychologist. Tr. at 138-39, 142-43. Of particular concern

¹⁰ With respect to alcohol treatment programs available to individuals, while I understand the Individual Psychologist's contention that such programs are not as effective as one would hope, *infra* n.7, I found the DOE Psychologist's testimony more convincing as to the usefulness such treatment programs.

is the Individual's failure to address his underlying depression, which the DOE Psychologist specifically indicated could assist in his efforts to remain abstinent. Ex. 7 at 8.

Although the Individual ceased his alcohol consumption because he recognized his alcohol use was maladaptive, he has not reduced his alcohol consumption or ceased alcohol consumption "in accordance with treatment recommendations," as he has not fully complied with the recommendations made by the DOE Psychologist. As the Individual's maladaptive consumption spanned years and resumed after his prison sentence and an additional thirty months of sobriety after serving his time, I am not convinced he can maintain his abstinence without enlisting the help of a dedicated counselor or sponsor. Tr. at 143-45. As the record shows, the Individual began consuming alcohol after a substantial period of abstinence. Tr. at 88-89. I am also unconvinced that the Individual is unique in that he is not in need of support or only requires the support of his neighbor, an individual who presented no qualifications or experience with substance abuse, as this flies directly in the face of the professional opinion provided by the DOE Psychologist. Tr. at 84, 141. Accordingly, the mitigating condition set forth at § 23(b) is also not present.

As the Individual has neither completed nor is currently participating in a treatment program or counseling, and that he has prior history of treatment and relapse, the mitigating conditions set forth at 23(c) and § 23(d) are not present.

B. Guideline J (Criminal Conduct)

The Individual's arrest record since 1986 raises security concerns under Guideline J. 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; or
- (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).

Most of the Individual's criminal conduct has been alcohol related, and while it is commendable that the Individual has not had an alcohol-related criminal charge since 2008, I cannot find that he

has mitigated Guideline J concerns. Many of his arrested have been alcohol related. In this regard, the Individual is new to sobriety, having only remained abstinent for two months at the time of the hearing. Considering that he has not sought treatment for his depression since being provided that recommendation by the DOE Psychologist and has failed to participate in AA meetings or engage a counselor, I have concerns regarding the success of his ongoing sobriety, and accordingly, I cannot find that alcohol related offenses are unlikely to recur. Further, although it is undisputed that approximately thirteen years have lapsed since the Individual's last alcohol related offense, I simply cannot ignore the multitude of these offenses. Tr. at 61. The egregiousness of the number of alcohol related offenses has not been eroded by time, and these offenses and circumstances still call the Individual's judgement into question especially given the uncertain status of the Individual reformation from alcohol misuse. My concern over the Individual's judgement is particularly bolstered by the fact the Individual has not sought support or assistance for an issue that resulted in so many criminal charges, outside of the support offered by his neighbor. Tr. at 141. Consequently, I find that the mitigating conditions set forth in ¶ 32(a) are not present.

Although the Individual provided evidence of a good employment record for the year 2020, has testified that his last alcohol related criminal charge was in 2008, and has provided evidence of two performance awards, the fact remains that his criminal record has spanned over twenty years. Tr. at 61. While the Individual has demonstrated praiseworthy accomplishments in his current employment position, such that the mitigating factor in ¶32(d) might be applicable, I do not find this sufficient to fully mitigate the Guideline J security concerns.

I need not address the mitigating factors described in Guidelines J at ¶ 32(b) and (c), as the Individual presented no evidence he was coerced or pressured into criminal action and did not present any evidence that he had not committed the criminal acts.

C. Bond Amendment

The Individual did not deny the fact that he served a term of imprisonment exceeding one year. The Individual is, as a result, disqualified from holding a DOE Access Authorization under the Bond Amendment. Although a number of years have passed since the Individual's incarceration, I find that, due to the Individual's seeming reluctance to seek professional assistance in addressing his SUD diagnosis in the manner suggested by the DOE Psychologist, an exception to disqualification under the Bond Amendment is not appropriate, as the Individual's most egregious criminal charges were alcohol related.

VI. Conclusion

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

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