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

In the Matter of: Personnel Security Hearing )  
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Filing Date: May 21, 2021 ) Case No.: PSH-21-0071  
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Issued: August 24, 2021

**Administrative Judge Decision**

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an 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.”<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 should not be granted access authorization.

**I. BACKGROUND**

On September 6, 2017, the Individual signed a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 12 at 52. The Individual disclosed on the QNSP that he was convicted of Driving Under the Influence of Alcohol (DUI) Causing Injury in September 2014. *Id.* at 41–42. The Individual also disclosed that he was sentenced to a five-year probation period which was ongoing as of the date he submitted the QNSP. *Id.* at 42. A background investigation performed by the Office of Personnel Management (OPM) revealed that the Individual was subjected to discipline in 2001 for failure to obey a lawful order, underage drinking, and being drunk on duty while serving in the U.S. military. Ex. 13 at 71.

An OPM investigator interviewed the Individual on August 21, 2018. *Id.* at 70. The Individual explained that he was arrested for DUI after he “crashed into a motorcyclist” and that he and his brother had “hopped a few bars, consuming beer and hard liquor shots at each bar” before the accident. *Id.* at 72. The Individual denied consuming any alcohol since his arrest for DUI in 2014 because he was “still on probation . . . .” *Id.* at 73. However, the Individual’s wife told an OPM

<sup>1</sup> 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.

investigator that she and the Individual consumed alcohol weekly and that he “gets drunk at parties when [she] is the designated driver which happens once every two months.” *Id.* at 97–98.

On October 15, 2019, the Local Security Office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his alcohol consumption. Ex. 7. In his response, the Individual represented that he consumed alcohol “on special occasions,” did not drink to intoxication, and had “never been concerned about [his] drinking habits.” *Id.* at 3–4. On January 2, 2020, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a clinical evaluation. Ex. 8 at 1.<sup>2</sup> The Individual admitted that he resumed consuming alcohol in 2015 and had not disclosed this information to the OPM investigator because of his “great pain and shame over the DUI incident . . . .” *Id.* at 6. The Individual reported to the DOE Psychologist that he usually consumed two drinks while socializing with friends twice monthly and that he intended to maintain this level of alcohol consumption in the future. *Id.* at 6.

The Individual underwent an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test at the request of the DOE Psychologist.<sup>3</sup> *Id.* The EtG test was negative, but the PEth test was positive at 32 ng/mL. Ex. 10 at 1. In a letter to the DOE Psychologist, the Medical Doctor (MD) who reviewed the results of the tests explained that the negative EtG test provided strong evidence that the Individual had not consumed alcohol in the three days prior to the tests. *Id.* The MD opined that, in light of the Individual’s negative EtG test and the estimated six-day half-life of the PEth molecule, the Individual’s PEth level was approximately 48 ng/mL three days prior to the collection of the test sample. *Id.* According to the MD, this PEth level was congruent with “significant,” but not “heavy,” alcohol consumption. *Id.* The DOE Psychologist issued a Psychological Assessment (Report) on January 11, 2020, in which he opined that “[l]aboratory results show that [the Individual] is habitually consuming alcohol to the point of impaired judgment.” Ex. 8 at 7–8. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for twelve months, documenting his abstinence from alcohol through regular, random alcohol tests, attending psychotherapy with a practitioner experienced in alcohol abuse, and participating in Alcoholics Anonymous or a similar twelve-step program twice weekly for twelve months. *Id.*

The LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) 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

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<sup>2</sup> Due to an unnumbered first page, the second page of Ex. 8 is paginated as “1,” the third page as “2,” and so on. This Decision cites to Ex. 8 in the order in which the pages appear without regard for the pagination of the document.

<sup>3</sup> A PEth test measures the presence of the PEth biomarker, which is formed from a chemical reaction occurring in blood when a person consumes alcohol, in a subject’s blood. *See* Ex. 10 at 1 (summarizing the alcohol testing performed on the Individual); *see also* Ex. C at 2 (describing the chemistry of PEth).

hearing. The LSO submitted fifteen exhibits (Ex. 1–14).<sup>4</sup> The Individual submitted three exhibits (Ex. A–C). The Individual presented the testimony of the Individual, the Individual’s wife, and a toxicologist (Individual’s Toxicologist), and DOE presented the testimony of the DOE Psychologist and a psychiatrist (DOE Expert) who authored an article on the administration and interpretation of the PEth blood test in the security clearance environment. Hearing Transcript (Tr.) at 3–4.

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

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 1. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The SSC cited the Individual’s statement to the OPM investigator that he had not consumed alcohol since 2014, which he contradicted in his response to the LOI and in the clinical interview with the DOE Psychologist, and the Individual’s statement to the DOE Psychologist that he usually consumed two alcoholic drinks per sitting which the MD and DOE Psychologist concluded was inconsistent with the results of the PEth test. Ex. 1 at 1. The LSO’s allegations that the Individual deliberately provided false or misleading information, or concealed or omitted information, concerning relevant facts in his interview with the OPM investigator, in response to the LOI, and in a clinical interview with a mental health professional involved in making a recommendation relevant to a national security eligibility determination justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the second basis for its determination that the Individual was ineligible for access authorization. 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 SSC cited the following allegations as raising security concerns under Guideline G: the DOE Psychologist concluded that the Individual habitually or binge consumed alcohol to the point of impaired judgment; in 2014 the Individual was charged with DUI Causing Great Bodily Harm and on that occasion his breath alcohol content registered 0.15%; and, in 2001, the Individual was charged by the U.S. Military with Minor in Consumption of Alcohol, Failure to Obey an Order, Drunk on Duty and Underage Drinking. Ex. 1 at 2. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work and habitually or binge consumed alcohol to the point of impaired judgment justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

## **III. REGULATORY STANDARDS**

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<sup>4</sup> The LSO designated two related exhibits as Ex. 7 and Ex. 7a, and thus the exhibit numbers do not correspond to the total number of exhibits submitted by the LSO.

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 Dep't 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. HEARING TESTIMONY**

The Individual's wife testified that the Individual consumes an average of two to three alcoholic drinks weekly. Tr. at 18–19. She added that she had observed the Individual consume five or more drinks on one occasion in the past two years. *Id.* at 23. The Individual's wife estimated that the Individual consumed alcohol to intoxication four or five times in the prior year. *Id.* at 23–24. She indicated that he becomes louder and less inhibited when intoxicated, and that she last observed him behaving in a manner that made her believe that he was intoxicated at a Fourth of July celebration approximately one month prior to the hearing. *Id.* at 30–31.

The Individual's wife testified that the Individual currently drinks to intoxication less frequently than in the past. *Id.* at 24, 31. She attributed this decrease to the fact that, over the last two years, they socialized less frequently in environments in which alcohol was served. *Id.* at 25–26. The Individual's wife testified that she observed the Individual consume alcohol to intoxication approximately ten to fifteen times in 2019. *Id.* at 32. She was also "sure it happened more than once in both 2017 and 2018," but could not remember with certainty how many times she observed him intoxicated in those years. *Id.* at 32–33.

The Individual testified that he experienced deep remorse for injuring the motorcyclist he struck during his DUI and said that he had committed to never operating a motor vehicle after consuming alcohol in the future. *Id.* at 43, 45. He represented that he completed the requirements of his probation and had not had trouble abstaining from alcohol for over six months following his DUI. *Id.* at 42–45. The Individual noted that, pursuant to the terms of his release, he was subject to six-months house arrest, during which he wore an ankle monitor which would have alerted authorities

if he consumed alcohol. *Id.* at 42. The Individual admitted that he violated the terms of his probation by consuming alcohol after the ankle monitor was removed. *Id.* at 75.

The Individual admitted that he falsely told the OPM investigator during the 2018 interview that he had abstained from alcohol since his DUI. *Id.* at 46. The Individual represented that, during the interview, he was asked about a domestic violence charge which was on his record of arrests and prosecutions due to clerical error and lied to avoid disclosing that he violated his probation because he “could draw the lines between DUI, domestic abuse[,] and clearance denial . . . .” *Id.*; *see also* Ex. 7(a) at 2, 27 (showing that a court ordered the correction of a clerical error indicating that the Individual had been convicted of domestic violence). The Individual represented that he “came clean” about his drinking habits in his response to the LOI. Tr. at 49.

The Individual indicated that his description of his alcohol consumption in response to the LOI was accurate based on his understanding of the word “intoxication.” *Id.* at 64–65. The Individual said that he believed that he was intoxicated when he had “trouble with [] motor skills or not being able to stay awake.” *Id.* at 47–48. According to the Individual, this definition of intoxication reflected information he learned from the DOE Psychologist and he stated that he previously defined intoxication as “lots of drinks, five, six, seven drinks in an hour or a couple hours . . . .” *Id.* at 48–49, 59. The Individual represented that, because he was not “an expert in the field,” he was “coming up with definitions that work for me, to the best of my knowledge.” *Id.* at 70. The Individual represented that he met his current personal definition for intoxication on one occasion in 2018. *Id.* at 49.

The Individual also indicated that his response to the LOI that he consumed “a few drinks at most” was consistent with his practice of consuming two to three drinks per sitting on special occasions. *Id.* at 50–51, 68–69. The Individual noted that he participates in an athletic hobby, and that he does not consume alcohol on days prior to engaging in athletic activity because doing so would impair his performance. *Id.* at 60–61. When questioned about whether his statements on the LOI regarding consuming alcohol on “special occasions” was consistent with his wife’s testimony as to his drinking habits, the Individual indicated that his definition of special occasion included friends visiting, eating takeout from a Michelin-starred restaurant, and other occasions which are special to him and his wife. *Id.* at 63–64. However, he acknowledged that, on some occasions, he consumes alcohol with ordinary meals. *Id.* at 64.

The Individual said that he told the DOE Psychologist that he had last consumed alcohol on New Year’s Eve, approximately 37 hours prior to the clinical interview. *Id.* at 52–53. The Individual testified that he was “pretty upset” when he received the DOE Psychologist’s Report because he thought it unfairly represented him as a person and did not explain the basis for the conclusion that his PEth concentration was 48 ng/mL or the limitations of the PEth test results. *Id.* at 56. The Individual felt that he was not habitually consuming alcohol to the point of impaired judgment and that the DOE Psychologist misinterpreted the PEth test results. *Id.* at 57. The Individual indicated that he decided not to follow the DOE Psychologist’s recommendations because he disagreed with his conclusions and did not believe that he had a drinking problem. *Id.* at 78.

The Individual’s Toxicologist testified that he began studying PEth testing after being retained as an expert witness in a case concerning the test in 2016. *Id.* at 82. Based on his studies, the

Individual's Toxicologist published a paper, including a novel computational model, which illustrated what he found to be the "high variability" in PEth values. *Id.*; *see also* Ex. B (reflecting the results and model authored by the Individual's Toxicologist and published in a peer-reviewed journal). The Individual's Toxicologist opined that the existing literature on PEth relied on studies drawn from small samples that could not adequately capture the range of variability in the general population. Tr. at 84.

The Individual's Toxicologist opined that it is impossible to infer a subject's level of drinking based on one PEth test, unless the subject's PEth concentration is very high, and that at least two tests are required to draw inferences about a subject's drinking. *Id.* at 91. The Individual's Toxicologist opined that within-person variations in PEth levels are best resolved by using a second test. *Id.* at 92–93. However, the Individual's Toxicologist indicated that differences in PEth formation between subjects could not be resolved without tools such as his model. *Id.* at 93.

Based on his model, the Individual's Toxicologist calculated that there was a fifty percent chance that an adult male with no PEth concentration would achieve a concentration of 32 ng/mL within twenty-four hours of consuming three 14-gram units of alcohol in a two-hour period and maintain that PEth level for up to forty-eight hours. *Id.* at 99–100; *see also* Ex. D. The Individual's Toxicologist testified that he believed that the interpretation of the Individual's PEth test relied upon by the DOE Psychologist failed to consider the significant possibility that moderate alcohol consumption might have produced the Individual's 32 ng/mL PEth concentration. Tr. at 102–07.

The DOE Expert testified that the MD's interpretation of the PEth test was reasonable in light of the information available to the MD. *Id.* at 137–39. However, the DOE Expert indicated that the Individual's self-described alcohol consumption of approximately two-and-one-half drinks on New Year's Eve was consistent with the results of the alcohol testing. *Id.* at 141–43. The DOE Expert agreed with the Individual's Toxicologist that the Individual's PEth concentration could have been produced by the Individual's self-reported alcohol consumption. *Id.* at 143–44.

The DOE Expert testified that three days was the median period for elimination of EtG, and that two units of alcohol would usually be detectable for up to forty-eight hours. *Id.* at 148. However, he acknowledged that the Individual could have eliminated the EtG more quickly than an ordinary person by consuming a great deal of water, as he might when engaging in athletics, or if he eliminated EtG at an unusually rapid rate. *Id.* at 148–50. The DOE Expert indicated that, in his experience, it is extremely rare for a subject to self-report drinking alcohol sooner to the date of the clinical interview than the true date on which they last consumed alcohol. *Id.* at 142. In light of the congruence between the Individual's self-reported alcohol consumption and the Individual's Toxicologist's modeling of PEth accumulation, his opinion as to the limitations of EtG testing, and his perception that the Individual was unlikely to falsely claim that he consumed alcohol more recently than he actually had, the DOE Expert opined that the results of the laboratory testing were consistent with the Individual's self-reported alcohol consumption. *Id.* at 158–61, 167–69.

The DOE Expert also opined that the Individual's PEth test result could not have provided insight into whether the Individual became intoxicated during the period measured by the PEth test. *Id.* at 166–67. Therefore, the DOE Expert indicated that he would not endorse the DOE Psychologist's

opinion that the PEth test provided evidence that the Individual consumed alcohol to intoxication at least monthly. *Id.* at 167.

The DOE Psychologist testified that he harbored concerns about discrepancies in the Individual's self-reported alcohol consumption as they reflected on his candor, but that he no longer believed that the Individual habitually consumed alcohol to the point of impaired judgment. *Id.* at 177, 179. The DOE Psychologist indicated that he would not recommend treatment to demonstrate rehabilitation or reformation based on the information he learned in the hearing. *Id.* at 182.

## V. FINDINGS OF FACT

The Individual was subject to non-judicial punishment for failure to obey a lawful order, being drunk on duty, and underage drinking while serving in the U.S. military in 2001. Ex. 13 at 71. In 2014, the Individual was charged with DUI causing injury and other offenses after he struck a motorcyclist while operating a motor vehicle with a blood alcohol content over 0.15%. Ex. 7a at 5–7. In September 2014, the Individual was sentenced to five years of probation, including one year of home confinement with electronic monitoring, fines and restitution, and 80 hours of community service through public speaking related to drinking and driving. *Id.* at 12–15. He was also ordered to enroll in an intensive outpatient treatment program (IOP) for alcohol, and to abstain from alcohol for the five-year term of his probation. *Id.*

The Individual completed the electronic monitoring, community service, and IOP required under his probation. Tr. at 42–45; Ex. 13 at 72–73. He violated the terms of his probation by consuming alcohol, beginning in 2015, after he was no longer subject to electronic monitoring. Tr. at 42, 75; Ex. 8 at 6 (indicating that the Individual resumed consuming alcohol in 2015). He also consumed alcohol to intoxication during the term of his probation. *Id.* at 32–33, 49. The Individual's probation was terminated by court order in June 2019. Ex. 7a at 30–31. The Individual has denied the belief that he has a problem with alcohol. Ex. 13 at 73; Ex. 7 at 4; Tr. at 78.

During an interview on August 21, 2018, the Individual falsely told an OPM investigator that he had not consumed alcohol since his 2014 arrest for DUI with the intention of misleading the OPM investigator and increasing his chances of obtaining a security clearance. Ex. 13 at 70, 73; Tr. at 46. On April 5, 2019, the Individual's wife told an OPM investigator that the Individual consumed alcohol on an approximately weekly basis and “gets drunk at parties when [she] is the designated driver which happens once every two months.” *Id.* at 97–98.

The Individual falsely indicated in his response to the LOI that he “consume[s] alcohol on special occasions (e.g. birthdays, weddings, anniversaries)” when he in fact consumed alcohol on a more routine basis.<sup>5</sup> Ex. 7 at 3; *but see* Ex. 13 at 97–98 (indicating that the Individual consumed alcohol

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<sup>5</sup> The Individual denies that his response to the LOI was untruthful on the basis that his definition of “special occasion” includes seeing friends and consuming meals at home with his wife. Tr. at 63–64. I find the Individual's explanation unreasonable and suggestive of an intent to deceive. The examples of “special occasions” that the Individual provided in response to the LOI – birthdays, weddings, and anniversaries – bear no relation to the ordinary circumstances under which he and his wife testified that he consumes alcohol, and no reasonable person would believe that they are representative of the situations in which he consumes alcohol. In reaching this conclusion, I found that the Individual's untruthfulness to the OPM investigator about his alcohol consumption and consumption of alcohol in violation of the terms of his probation for several years undermine his credibility regarding his alcohol consumption.

weekly); Ex. 8 at 6 (admitting to the DOE Psychologist that he consumed alcohol twice monthly). The Individual also falsely indicated in his response to the LOI that he does “not drink to the point of intoxication” and that he was last intoxicated on the night of his arrest for DUI.<sup>6</sup> Ex. 7 at 4; *but see* Ex. 13 at 97–98 (indicating that the Individual consumed alcohol to intoxication every other month); Tr. at 32–33 (indicating that the Individual became intoxicated in 2017 prior to responding to the LOI). The Individual also falsely told the DOE Psychologist in the clinical interview that he last consumed alcohol to intoxication in January 2018. Ex. 8 at 5. The Individual has consumed five or more drinks in one sitting on at least one occasion, and displayed physical signs of intoxication on multiple occasions, since January 2018. Tr. at 23–24, 30–31, 49.

The Individual’s January 2, 2020, EtG test was negative for traces of alcohol and the PEth test was positive at a level of 32 ng/mL. Ex. 10. The MD relied on the negative EtG test in inferring that the Individual’s PEth concentration was 48 ng/mL three days prior to the test and concluded that a PEth concentration of 48 ng/mL could not have been produced by a subject consuming an average of two drinks twice per month. *Id.* The DOE Psychologist inferred from the results of the PEth test that the Individual habitually consumed alcohol to the point of impaired judgment. Ex. 8 at 7. An EtG test will not produce a positive result in all cases in which a subject consumes two units of alcohol within three days of the test.<sup>7</sup> Tr. at 148–50. A PEth concentration of 32 ng/mL does not provide any evidence as to whether the subject became intoxicated during the measurement period of the PEth test. *Id.* at 166–67.

## VI. ANALYSIS

### A. Guideline E

The LSO’s allegations that the Individual intentionally provided false information concerning his alcohol consumption to an OPM investigator, in response to the LOI, and to the DOE Psychologist raise security concerns under Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b). The Individual asserted that the MD improperly interpreted the PEth test and that it did not provide evidence that he consumed more alcohol than he admitted. Tr. at 56–57. The Individual admitted that he lied about his alcohol consumption to the OPM investigator. *Id.* at 46. However, he asserted that he mitigated his untruthfulness when he “came clean” in his response to the LOI. *Id.* at 49. The Adjudicative Guidelines provide seven conditions which may mitigate security concerns under Guideline E:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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<sup>6</sup> The Individual’s claim not to have consumed alcohol based on his extreme definition of intoxication, characterized by loss of motor skills and difficulty remaining awake, is unreasonable and appears to be an attempt to justify his claims to not drink to intoxication. As with the conclusion that the Individual misrepresented the occasions on which he consumed alcohol, I find that the Individual’s credibility is undermined by his untruthfulness to the OPM investigator concerning his drinking and consumption of alcohol in violation of the terms of his probation.

<sup>7</sup> This finding is based on the opinion of the DOE Expert and absence of any other evidence on the period within which EtG is eliminated. I might have reached a different conclusion had the MD testified as to basis for his opinion that the EtG test was strong evidence that the Individual had not consumed alcohol in the three days prior to the test.



- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17(a)–(g).

I agree with the Individual that the results of the PEth test did not show that he consumed more alcohol than he admitted. The MD's conclusion relied upon the results of the negative EtG test, which he determined provided strong evidence that the Individual did not consume alcohol in the three days prior to the test. However, the DOE Expert testified that the Individual might have eliminated the EtG from his urine in the approximately thirty-seven hours between the Individual's last self-reported drink and the EtG test and that the Individual's PEth level was congruent with his self-reported level of drinking. As the DOE Expert conceded that the Individual's self-reported alcohol consumption was consistent with the results of the PEth test, I find that results of the PEth test do not present a security concern under Guideline E and that the allegation listed in paragraph I(B) of the SSC is resolved.

The first mitigating condition under Guideline E is inapplicable because the record does not show that the Individual made good-faith efforts to correct his misrepresentations before being confronted with the facts. There is no evidence that the Individual sought to clarify his false statement to the OPM investigator before his wife revealed his alcohol consumption in an interview with an OPM investigator nearly eight months later. *Supra* p. 7. The Individual's acknowledgement of his untruthfulness in his response to the LOI does not satisfy the mitigating condition because it is apparent from the questions in the LOI that the LSO was aware of the Individual's deception. As described above, the Individual does not acknowledge that his responses to the LOI or statements to the DOE Psychologist included misrepresentations about his drinking habits, and accordingly this mitigating condition is inapplicable to those misrepresentations. Adjudicative Guidelines at ¶ 17(a).

The second mitigating condition under Guideline E is inapplicable because the Individual did not assert that any of his misrepresentations were made on the advice of counsel. *Id.* at ¶ 17(b).

The third mitigating condition under Guideline E is inapplicable because the Individual's misrepresentations were frequent, recent, and raise substantial concerns about his reliability, trustworthiness, and judgment. The Individual's untruthfulness to the OPM investigator, LSO, and DOE Psychologist to avoid negative consequences raises serious concerns about his reliability and trustworthiness, occurred on multiple occasions, and is ongoing because the Individual did not fully acknowledge the untruthfulness in his hearing testimony. Thus, mitigating condition (c) under Guideline E is inapplicable. *Id.* at ¶ 17(c).

The fourth and fifth mitigating conditions under Guideline E are inapplicable because the Individual does not fully acknowledge his untruthfulness and has not taken positive steps to alleviate the factors which led to his untruthfulness. The Individual's deceptions reflect a prioritization of himself and his desire to avoid negative consequences over the interests of national security. The Individual has not pursued counseling or other concrete steps to address this behavior. Moreover, the testimony of the Individual's wife that he consumed alcohol to intoxication less than one month prior to the hearing suggests that the consumption of alcohol to excess may remain a source of concern for the Individual in the future. *Supra* p. 4. Therefore, mitigating conditions (d) and (e) are inapplicable. Adjudicative Guidelines at ¶ 17(d)–(e).

The sixth mitigating condition under Guideline E is not applicable because the security concerns asserted by the LSO are not based on unsubstantiated information or unreliable sources. As described above, I do not credit the Individual's claims regarding his misrepresentations in response to the LOI or to the DOE Psychologist. The only relevant source of information concerning the Individual's behavior besides the Individual himself is the Individual's wife, whose testimony I found highly credible and consistent with her prior statements to the OPM investigator. Thus, mitigating condition (f) is inapplicable. *Id.* at ¶ 17(f).

The final mitigating condition under Guideline E does not apply because the LSO's allegations do not involve association with persons involved in criminal conduct. *Id.* at ¶ 17(g).

The Individual repeatedly demonstrated a willingness to engage in untruthfulness to avoid negative consequences. The Individual continued to offer unreasonable and implausible explanations for his misleading responses to the LOI and statements to the DOE Psychologist at the hearing. The Individual's prioritization of himself over truthfulness and adherence to rules and regulations presents an unacceptable risk to national security. Therefore, although the Individual has established that the opinion of the MD concerning the PEth test does not present security concerns under Guideline E, I find that the Individual has not fully resolved the security concerns asserted by the LSO under Guideline E.

## **B. Guideline G**

The Individual did not contest that he committed the alcohol-related offenses cited in the Notification Letter. Tr. at 39, 41–42. The Individual sought to mitigate these security concerns by showing that he had consumed alcohol responsibly since his 2014 DUI and had not committed any further alcohol-related offenses. The Individual disputed the opinion of the DOE Psychologist that he habitually consumed alcohol to the point of impaired judgment and argued that the opinion was

flawed because of its misinterpretation of the PEth test. An individual can 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; and,
- (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).

The DOE Expert testified that the results of the Individual's PEth test did not provide evidence of how much alcohol the Individual consumed in one sitting and, therefore, could not provide evidence that the Individual consumed alcohol to intoxication. Tr. at 166–67. Based on the DOE Expert's testimony, the DOE Psychologist withdrew his opinion that the Individual habitually consumes alcohol to the point of impaired judgment and his recommendations for treatment. *Id.* at 177, 182. As the DOE Psychologist withdrew his opinion, and the DOE Psychologist's opinion was the only basis cited by the LSO in the SSC for its allegation that the Individual habitually consumed alcohol to the point of impaired judgment, I find that the allegations asserted by the LSO in paragraph II(A) of the SSC are resolved.

I find that, taking into account the Individual's youth and immaturity at the time of the offenses, the security concerns related to the Individual's alcohol-related infractions while serving in the U.S. military are resolved by the passage of over 20 years. Adjudicative Guidelines at ¶ 23(a); 10 C.F.R. § 710.7(c). However, the passage of time since the Individual's 2014 DUI does not resolve the security concerns arising from the offense. The Individual's probation for the DUI was terminated by court order in June 2019. Ex. 7a at 29. The Individual violated the terms of his probation by consuming alcohol, beginning shortly after he was no longer subject to electronic monitoring and continuing, albeit with interruptions, until the termination of his probation. *Supra* p. 7. In assessing the frequency and recency of the Individual's conduct, I have taken into account the Individual's consumption of alcohol on numerous occasions, including to intoxication, during the term of his probation. I find that the passage of approximately two years since the termination of the Individual's probation is too little time for me to conclude that the passage of time mitigates the security concerns under Guideline G.

I am likewise unconvinced that the Individual will avoid future alcohol-related offenses because the Individual demonstrated very little insight into the seriousness of his behavior or concern that his behavior reflects a problematic relationship with alcohol. Despite performing 80 hours of court-

ordered public speaking related to drinking and driving and completing an IOP, the Individual professed that he did not know the meaning of “intoxicated” when responding to questions related to his eligibility for a security clearance. Tr. at 70. Although the Individual completed the IOP, he was either unable or unwilling to restrain himself from consuming alcohol during the term of his probation and resorted to lying about his alcohol consumption to an OPM investigator to hide his conduct. Despite causing serious injury to a motorcyclist while intoxicated and resorting to deception and violation of a court order to satisfy his urge to drink, the Individual claims to have “never been concerned about [his] drinking habits.” Ex. 7 at 4. The Individual’s willingness to violate a court order to satisfy his desire to drink and lack of insight into the possibility that his inability or unwillingness to control his urges may represent a problematic use of alcohol, even after receiving treatment, causes me to significantly doubt his ability to control his impulses and avoid committing alcohol-related infractions in the future. Thus, I find that the first mitigating condition under Guideline G is inapplicable. Adjudicative Guidelines at ¶ 23(a).

The second mitigating condition under Guideline G is inapplicable because the Individual denies maladaptive alcohol use and has not established a pattern of modified consumption or abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(b). The third mitigating condition under Guideline G is inapplicable because the Individual is not currently pursuing treatment. *Id.* at ¶ 23(c). The fourth mitigating condition under Guideline G is inapplicable because, although the Individual completed the IOP, the Individual has not demonstrated a pattern of modified consumption or abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(d).

The Individual has demonstrated that the DOE Psychologist drew inappropriate inferences from the Individual’s PEth test and that the PEth test was insufficient evidence to raise a security concern that the Individual habitually consumed alcohol to the point of impaired judgment. However, I find that the Individual’s inability or unwillingness to comply with the terms of the court-ordered probation for his DUI and lack of insight into the concerns raised by his conduct cast significant doubt on his judgment and ability or willingness to comply with rules and regulations. Thus, I find that he has not fully resolved the security concerns asserted by the LSO under Guideline G.

## **VII. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE to raise security concerns under Guideline E and Guideline G 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals