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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: June 29, 2021) Case No.: PSH-21-0082
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Issued: October 19, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX 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 or 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 submitted a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO) on February 1, 2019, in which he reported that he had been arrested for Driving Under the Influence (DUI) in November 2018. Ex. 9 at 1, 37. The United States Office of Personnel Management (OPM) subsequently conducted a background investigation of the Individual, which it completed on June 27, 2019. Ex. 10 at 1. During that investigation, on March 14, 2019, an OPM Investigator conducted an Enhanced Subject Interview (ESI) of the Individual, in which the Individual was questioned about the DUI arrest. The Individual stated that, after consuming approximately five mixed drinks in a four-hour period, he did not feel intoxicated and decided to drive home. Ex 10 at 64. However, he fell asleep at the wheel and hit a parked car, which led to his arrest. Ex. 10 at 64. During the ESI, the Individual was also questioned about an alcohol-related incident in the summer of 2015, which led police to, in the Individual’s words, took him to the ‘drunk tank’ to sober up. Ex. 10 at 64. He indicated that he was released the next morning and was not charged with a criminal offense. Ex. 10 at 64. The OPM Investigator also

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

obtained the Individual's police record which confirmed that he had been arrested for DUI on November 10, 2018. Ex. 10 at 81.

On February 24, 2020, the LSO issued Letters of Interrogatory (LOI) to the Individual. Ex. 6 at 1. The Individual submitted his Response to the LOI (the Response) to the LSO on March 3, 2020. Ex. 6 at 11. In the Response, the Individual admitted that he had been arrested for DUI on November 10, 2018. Ex. 6 at 2. The Individual initially stated that he could not recall how much alcohol he had consumed prior to this DUI arrest, but subsequently he admitted consuming approximately six to ten mixed drinks during the four-hour period preceding his DUI arrest. Ex. 6 at 2, 12. Although he admitted that he had been intoxicated, he also stated: "I do recall feeling able to drive after sobering up." Ex. 6 at 2, 9. The Individual initially claimed that he had not been administered a breath alcohol test at the time of this arrest, but subsequently admitted that a breathalyzer test indicated that his blood alcohol level at the time of his DUI arrest was between .15 and .17%. Ex. 6 at 4, 12. In response to questions concerning the alcohol-related incident in the summer of 2015, the Individual stated that, after an argument with his then-wife, he left his home and was stopped by police who then took him to a psychiatric hospital, where he stayed overnight. Ex. 6 at 5-6. The Individual claimed that he had consumed a "moderate amount" of alcohol prior to this incident. Ex. 6 at 5.

Because of the Individual's DUI and alcohol-related hospitalization, the LSO requested that he undergo an evaluation by a DOE-contracted Psychologist (DOE Psychologist), who conducted a clinical interview (CI) of the Individual on August 28, 2020. Ex. 7 at 2. In addition to interviewing the Individual, the DOE Psychologist reviewed the Individual's medical records and personnel security file, spoke with a psychologist (EAP Psychologist B) employed by Individual's Employee Assistance Program (EAP) who had provided counseling to the Individual, and provided for the administration of three tests to the Individual: a standardized psychological assessment, the Minnesota Multiphasic Personality Inventory - 2 - Restructured Form; the Ethyl Glucuronide (EtG) urine test (which detects alcohol up to 80 hours after any alcoholic beverage is consumed); and a Phosphatidylethanol (PEth) blood test (which detects alcohol use during the previous 28-days). Ex. 7 at 2. The DOE Psychologist issued a report of her findings (the Report) on August 27, 2020. Ex. 7 at 2.

The Report indicates that the Individual's account, provided to her at the CI, of the circumstances leading to his detainment by police and his overnight stay in a psychiatric facility in the summer of 2015, was consistent with the account that he had provided in the Response. Ex. 7 at 2-3. During the CI, the Individual also provided an account of the circumstances which led to his November 10, 2018, DUI arrest that was generally consistent with the account he had provided in the Response. Ex. 7 at 2. However, the Report notes that the Individual's accounts of his alcohol consumption that he provided during the Response, the ESI, and the CI were inconsistent with one another. Ex. 7 at 2. In the Response, the Individual states that he consumed six to ten mixed drinks during the four hours prior to his DUI arrest. During the ESI, he claimed to have consumed five mixed drinks prior to the DUI. During the CI, he stated that he had consumed five or six drinks during the one and a half hours prior to his DUI arrest. Ex. 7 at 2. The DOE Psychologist further reported that, during the CI, the Individual claimed that he could only remember being intoxicated on two occasions: on the night in 2015 that he was detained by police and spent the night in the psychiatric facility, and on the night of his DUI arrest. Ex. 7 at 3. He further claimed that he could

only recall two occasions when he consumed more alcohol than he had intended: a birthday gathering in 2011, and the night of his DUI arrest. Ex. 7 at 3. During the CI, the Individual claimed that he last consumed alcohol on April 13, 2020 (his birthday), over four months prior to the August 28, 2020, CI. Ex. 7 at 3. However, the DOE Psychologist's report indicates that the PEth test administered to the Individual on the day of the CI was positive, indicating that the Individual had consumed a moderate to heavy amount of alcohol during the previous 28 days.² Ex. 7 at 4.

During the CI, the Individual informed the DOE Psychologist that he had sought counseling from the Veteran's Administration (VA) to help him process a fellow Marine's suicide. Ex. 7 at 4. The Individual, however, denied that he had ever had suicidal thoughts. Ex. 7 at 4. The Individual also refused to sign a release that would have allowed the DOE Psychologist to obtain his counseling records from the VA. Ex. 7 at 4-5.

The DOE Psychologist reported that she had contacted EAP Psychologist B by telephone. Ex. 7 at 2, 5. During this conversation, EAP Psychologist B reported that the focus of his therapy with the Individual had been to address the Individual's losses during his military service, his childhood experiences, and his failed marriage. Ex. 7 at 5. EAP Psychologist B further reported that he had obtained the Individual's mental health records from the VA, which had indicated that the Individual had expressed suicidal ideation in 2014. Ex. 7 at 5. However, EAP Psychologist B reported that the Individual had convincingly denied any present suicidal ideation during his therapy sessions with the Individual. Ex. 7 at 5. EAP Psychologist B described the Individual to the DOE Psychologist as "guarded and evasive about his emotions and what was going on with him internally." Ex. 7 at 5.

The Report concluded that "there is evidence that [the Individual] engages in binge drinking to the point of impaired judgment," and that the Individual's "self-reported frequency of drinking is not reliable. . . ." Ex. 7 at 6. Moreover, the DOE Psychologist opined:

[The Individual] has difficulty regulating feelings of shame, and he responds to these feelings by withholding information that might cause embarrassment or discomfort. While this did not rise to the level of a personality condition, it was clinically significant as it led to lapses in judgment regarding how much information to disclose about his drinking and past suicidal ideation. This called his trustworthiness to reveal potentially embarrassing information into question. It led to his not being reliable and consistent in telling the complete truth. Emotional distress about the suicides of fellow marines contributed to out of control drinking, and until it is resolved, he continues to be at risk of being unstable.

Ex. 7 at 6.

To address the concerns about the Individual's alcohol consumption, the DOE Psychologist recommended that the Individual abstain from the use of alcohol for 12 months, and actively participate in an abstinence-based alcohol treatment program or Alcoholics Anonymous (AA), by attending meetings at least three times a week for 18 months. Ex. 7 at 6. To address the concerns raised by the Individual's mental condition, the DOE Psychologist recommended that "he receive

² The EtG test administered to the Individual on that date was negative. Ex. 7 at 4.

weekly, one-hour psychotherapy sessions with the goals of learning suicide prevention skills, processing the suicides of his fellow marines, and improving his ability to tolerate distress with adaptive coping skills. The therapy should continue for at least a year or until he and his therapist agree that he has met the treatment goals.” Ex. 7 at 6. The DOE Psychologist further opined: “Therapy through the VA or with a therapist skilled in working with veterans is recommended.” Ex. 7 at 6.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *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 in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from seven witnesses: the Individual, his second-tier supervisor, three of his coworkers, the DOE Psychologist, and EAP Psychologist B. *See* Transcript of Hearing, Case No. PSH-21-0082 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted three exhibits, marked as Exhibits A through C.

The Individual’s Exhibit A consists of the Individual’s treatment notes from the EAP. These records indicate that the EAP’s initial diagnostic impression of the Individual was “alcohol abuse” and that his initial treatment plan was for weekly counseling.³ Ex. A at 2-3.

The Individual’s Ex. B is a scholarly article entitled *Phosphatidylethanol in Blood as a Marker of Chronic Alcohol Use: A Systematic Review and Meta-Analysis* published in the *International Journal of Molecular Sciences* at www.mdpi.com/journal/ijms in 2012. The Abstract of this meta-

³ The EAP treatment records further indicate that the Individual was initially resistant to participating in the counseling sessions mandated by his employer. On March 26, 2019, he was informed that he was being monitored by the EAP because of his DUI and that he needed to comply with the EAP monitoring. Ex. A at 4. On June 20, 2019, the Individual’s initial EAP counselor (EAP Psychologist A) wrote him an email noting that he had missed an appointment and further stating:

As I mentioned to you, one of the conditions following an incident similar to yours, is follow-up with an EAP psychologist on an ongoing basis. . . . If you are not willing to follow through with monitoring/counseling, then we will need to recommend suspension of your [] certification. If you would like to reschedule your appointment, please call [] as soon as possible. Compliance can be accomplished with brief, monthly appointments. We can discuss length of monitoring. If you would prefer working with a different psychologist, that is also a possibility. Please let me know how you would like to proceed.

Ex. A at 5. Ex. A indicates that EAP Psychologist A contacted the Individual to discuss this email and that the Individual claimed that he had not been able to read it because of computer problems. Ex. A at 5. Ex. A indicates that the Individual failed to show up for his appointments or to respond to the EAP attempts to schedule appointments on several occasions and had to be repeatedly reminded that he was being monitored by the EAP. Ex. A at 4, 6, 8, 9.

analysis concluded: “The present analysis demonstrates a good clinical efficiency of PEth for detecting chronic heavy drinking.” Ex. B at 1.

The Individual’s Ex. C is the written declaration of the Individual’s immediate supervisor, who wrote that the Individual has “performed his duties with complete professionalism” and indicated that he has “never questioned” the Individual’s reliability or judgment. Ex. C at 1-2. He further opined that he had not detected any signs of alcohol abuse by the Individual. Ex. C at 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. In support of this determination, the LSO cited Guidelines G and I of the Adjudicative Guidelines.

Under Guideline G (Alcohol Consumption), the LSO cites the Individual’s DUI arrest and the Psychologist’s conclusion that the Individual binge consumes alcohol to the point of impaired judgment. 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 set forth in the Guidelines that could raise a disqualifying security concern, under Guideline G, are “alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder,” and “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.” Guideline G at §§ 22(a) and (c).

Under Guideline I (Psychological Conditions), the LSO cites the Psychologist’s conclusion that the Individual has an emotional, mental, or personality condition or conditions that can impair his judgment, reliability, stability, or trustworthiness. 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 “behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness not covered under any other guideline and that may indicate an emotional, mental, or personality condition including, but not limited to . . . deceitful . . . behaviors,” and “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness.” Guideline I at §§ 28(a) and (b).

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory

standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (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 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 second-tier supervisor testified at the hearing that the Individual has had no security incidents or disciplinary actions during his employment at a DOE facility. Tr. at 17. Three coworkers of the Individual testified on his behalf at the hearing. The first coworker (Coworker A) described himself as a close friend, “almost like a brother.” Tr. at 26. Coworker A described the Individual as a light drinker whose never consumes more than one or two drinks at a time. Tr. at 27. He testified that he last observed the Individual consuming alcohol “maybe a little less than a month ago or three weeks ago,” when the Individual consumed two beers. Tr. at 28. A second coworker (Coworker B) described the Individual as a “mentor,” “a great leader,” and a “dear friend.” Tr. at 35. He testified that he consumes alcohol with the Individual “maybe once, twice a month.” Tr. at 36. On those occasions, Coworker B testified, the Individual has consumed “maybe a glass of wine or a beer at most.” Tr. at 37. However, Coworker B recalled an occasion where he observed the Individual consuming two glasses of wine. Tr. at 37. Coworker B also testified that the Individual “talks about wanting to be strong for everybody, and wanting to be that individual that if anybody were to pass, that he knows that they would want him to be strong and keep his head up, you know, and be there for everybody.” Tr. at 41. A third coworker, (Coworker C) testified that he “kind of adopted” the Individual “almost as a stepson.” Tr. at 49. He has observed the Individual consuming alcohol, but never in excess, and has never observed the Individual in an intoxicated state. Tr. at 50. Coworker C testified that he was surprised when the Individual was arrested for DUI. Tr. at 52. The Individual told Coworker C that he was not intoxicated at the time of the DUI but had just fallen asleep at the wheel. Tr. at 53.

EAP Psychologist B testified at the hearing. He testified that he is “a Substance Abuse Professional, as recognized by the Department of Energy, [and] a court-appointed expert regarding substance abuse.” Tr. at 78. He testified that he had been counseling the Individual through the EAP since December 28, 2020, after the Individual had initially received counseling from EAP Psychologist A. Tr. at 64-65. The Individual had originally entered the EAP to receive counseling for substance abuse or alcohol use because of his DUI, and his employer, a DOE Contractor, expected him to meet with a EAP psychologist every two weeks for a six-month period to monitor his progress in addressing the concerns raised by his DUI arrest. Tr. at 66, 90. EAP Psychologist B

testified that it was difficult for the Individual to trust him as a therapist because he was employed by the Individual's employer. Tr. at 67. He testified that he thought that the Individual had been honest with him but had not been "open" with him. Tr. at 67. He further described the Individual as "defensive" and "guarded" and noted that the Individual did not trust the EAP. Tr. at 67, 84. The Individual's counseling sessions with EAP Psychologist B ended when the Individual had completed the 12 sessions required by his employer. Tr. at 69-70, 90. EAP Psychologist B testified that the focus of his counseling with the Individual was on his emotional state rather than his alcohol issues. Tr. at 73-74. EAP Psychologist B was not concerned that the Individual was abusing alcohol and saw no "red flags" regarding the Individual's alcohol use. Tr. at 74, 92-93. He made no recommendations to the Individual to address any alcohol issues. Tr. at 75, 93. EAP Psychologist B testified that the Individual "did express that there were times he has had suicidal thoughts, but again, I think as we've progressed, it became more apparent that, you know, he had protections in place and that those thoughts were in the past and that he was not going to act upon them." Tr. at 76. EAP Psychologist B testified that he did not have any concerns about the Individual's judgement, noting that the Individual was not irrational or impulsive, and was "properly focused" and "reasoned in his conclusions." Tr. at 76-77. However, EAP Psychologist B further testified that the Individual did experience some "emotional dysregulation" and "cognitive distortions" which were addressed during their counseling sessions. Tr. at 94. He testified that he did not provide the Individual with "in-depth" psychotherapy. Tr. at 82.

The Individual began his testimony at the Hearing by providing an account of the circumstances which led to his DUI arrest. He initially testified that he attended a social event at which he consumed five or six or "maybe a little more" alcoholic beverages, but subsequently testified "I honestly don't remember" the amount of alcohol that he consumed on the evening of his DUI. Tr. at 107-108, 146. He repeatedly testified that he did not feel intoxicated at the time. Tr. at 143-146. He attempted to drive himself home but fell asleep at the wheel and hit a parked car. Tr. at 108. His BAL was above the legal limit and he was taken to jail. Tr. at 109. After this incident, he began seeking counseling from the Veteran's Administration (VA) where he discussed the loss of his fellow Marines. Tr. at 113. During his counseling at the VA he "opened up about suicidal ideation" in 2019, and admitted that he considered suicide but decided against it because he didn't want to hurt those who cared for him. Tr. at 113, 116, 118. He also discussed family matters concerning his sister who was having mental health issues, and his former marriage that ended in 2016. Tr. at 114, 116. While he obtained sporadic counseling from the VA in 2020, he has not received any counseling from the VA in 2021. Tr. at 115, 133.

The Individual admitted he failed to disclose his suicidal ideation experience to the DOE Psychologist when she asked about it. Tr. at 118. When the Individual was asked why he failed to disclose his previous suicidal ideation to the DOE Psychologist, he cited his distrust of the EAP. Tr. at 118.

The Individual testified that he does not keep alcohol in his home; that he only drinks socially; and that he has not consumed alcohol to the point of impairment since his DUI. Tr. at 120, 122-123. The Individual further testified that he does not binge drink, or regularly drink to the point of impairment. Tr. at 125. The Individual admitted that he told the DOE Psychologist that he last consumed alcohol on his birthday, April 13, 2020, but repeatedly claimed that that statement was truthful. Tr. at 124, 131. When he was asked why he tested positive for alcohol on the day of the

CI, he initially provided a non-responsive answer.⁴ Tr. at 125. The Individual then testified that he was not trying to deceive the DOE Psychologist. Tr. at 125. The Individual subsequently testified that he stated that his last use of alcohol occurred on his birthday because it was the last instance of alcohol use he could remember. Tr. at 132. He further testified that he would be capable of abstaining from alcohol use for 12 months if he was asked to do so and would be willing to undergo PEth testing every other month. Tr. at 126. He further testified that he was willing to enter an alcohol treatment program, and to participate in AA if he was required to do so. Tr. at 126. When asked by his attorney if he was willing to follow the psychotherapy treatment program recommended by the DOE Psychologist, the Individual responded by stating, “If that’s asked of me, yes, I am.” Tr. at 127. The Individual testified that he reached out to “psychologists to start something along the lines of emotional dysregulation” in March or April of 2021. Tr. at 127-128. He has had an initial assessment, in April 2021, and several subsequent assessments, but is waiting to be assigned a psychologist. Tr. at 128, 136-137.

The Individual testified that he first saw the DOE Psychologist’s report in December 2020.⁵ Tr. at 134. When the DOE Counsel asked the Individual why he did not take action to implement the DOE Psychologist’s recommendations during the 11 months after he received her report, he testified that he believes that he was already complying with her recommendations. Tr. at 135. When the DOE Counsel asked the Individual about the 2015 incident, the Individual testified that he had been having wine with his then-spouse and her parents at his in-laws’ home. Tr. at 142. He and his then-spouse began arguing and he decided to walk home. Tr. at 142. His then-spouse called the police. Tr. at 142. When the police arrived, they offered to take him to a local psychiatric facility.⁶ Tr. at 142. He could not recall how much wine he had consumed that night, however he is sure that it was “in moderation.” Tr. at 142-143. When he was subsequently asked why he identified this incident during the CI as one of the two times he felt intoxicated, the Individual testified: “Well, that’s the time that I felt like maybe I did have a little too much, if I’m getting put into [the psychiatric facility] or if I’m walking home and she’s calling the cops on me. I felt like that could possibly be a time of intoxication, because I had drank during that time.” Tr. at 143. The Individual testified that he has not received any counseling for alcohol use. Tr. at 153.

⁴ Specifically, the Individual stated:

I know that the test came out that I did have some, and to be honest, the last event that I know that I had something was on my -- on my birthday. During COVID, there was nothing open, but when we went out, bars were closed, eating establishments were closed, so my time at my -- me telling [the DOE Psychologist] that, that’s the last thing that I referred to as me having an event that I felt like I had alcohol like that.

Tr. at 125.

⁵ The Individual, apparently trying to discredit the DOE Psychologist, testified that EAP Psychologist B told him that he had not talked with the DOE Psychologist before she issued the Report, so that when the Report mentioned the DOE Psychologist’s conversation with EAP Psychologist B “it raised a flag” for him. Tr. at 134.

⁶ The DOE Psychologist testified that the specific psychiatric facility to which the Individual was admitted is “an inpatient psychiatric hospital. That’s not a place where you go to sleep it off. A person has to be a danger to themselves or to others, or be greatly disabled to be admitted . . . to me that says that he’s probably minimizing just how intoxicated he was and whether he was a danger to himself at that time.” Tr. at 181.

The DOE Psychologist testified after observing the testimony of each of the other witnesses at the Hearing. The DOE Psychologist testified that the Individual has engaged in binge drinking on at least two occasions: the 2018 DUI arrest and the 2015 incident which led to his hospitalization. Tr. at 158. She further noted that both incidents resulted from emotional distress: in 2018, a fellow Marine had committed suicide, and in 2015, he was having issues with his spouse. Tr. at 158. She stated that, while there is no evidence that the Individual consumes excessive amounts of alcohol on a regular basis, his binge drinking is problematic because it results in lapses of judgement and instability. Tr. at 158-159. She noted that the Individual has provided conflicting accounts of how much alcohol he consumed prior to his DUI arrest. Tr. at 160. Moreover, she was concerned that the Individual was unable to monitor the amount of alcohol he consumes when he drinks and is unable to accurately judge his level of impairment and therefore does not have control over his drinking. Tr. at 160. She was further concerned about the Individual's claim that his last use of alcohol occurred on his birthday, when his testing indicated otherwise. Tr. at 163. She further noted that the Individual had not complied with any of her recommendations concerning his alcohol use. Tr. at 163-164. He has not abstained from alcohol use. Tr. at 163. He has not participated in AA. Tr. at 164. She noted that Individual's testimony that he has not engaged in excessive alcohol consumption cannot be relied upon because his self-reporting has been inaccurate, opining that because the Individual "has been inconsistent and untruthful about how often he has engaged in binge drinking, there are likely many more times than he has disclosed to us." Tr. at 180.

The DOE Psychologist testified that, while the Individual's emotional issues don't qualify for a diagnosis under the DSM, the manner in which he regulates his emotions causes him to be overwhelmed at times. Tr. at 159. When he becomes overwhelmed by his emotions, he engages in excessive alcohol consumption. Tr. at 159. She further opined that the Individual has "problems in how he manages embarrassment and shame in that he hides the truth and withholds information. That's problematic in terms of his ability to be trustworthy and to really be reliable, and needing to actually say what happened, and to be consistent with that." Tr. at 159. The DOE Psychologist noted that the Individual has been withholding information from his friends, his therapists, and the DOE. Tr. at 161.

The DOE Psychologist further opined: "My recommendation was that he meet with the therapist until the therapist and he agreed that he had met the treatment goals, and I don't see evidence of that. I do see that he went to therapy, but that they did not work on those goals, and it was not a year of treatment." Tr. at 165. The DOE Psychologist was concerned that the Individual has had "basically no psychotherapy." Tr. at 168. She noted that EAP Psychologist B specifically testified that he did not provide the Individual with therapy or treatment, and that the Individual had only six counseling sessions with the VA. Tr. at 165- 166. She discounted the Individual's alleged willingness to comply with her recommendations, noting that he has had 11 months to act on her recommendations, but has failed to do so. Tr. at 166. The DOE Psychologist further opined: "I heard a lot of dodging of questions, or not being straightforward and forthcoming with information in answers to questions, and that I found concerning." Tr. at 169. Moreover, the DOE Psychologist cited the Individual's "inability to regulate his emotions" as a cause of his binge drinking. Tr. at 180. She noted that the Individual continues to drink without having taken any steps to ensure that he doesn't engage in any further binge drinking. Tr. at 180-181. In summation, she testified, "I

see that he is not trustworthy. He is not reliable. He is vulnerable to being unstable, and he has poor judgment.” Tr. at 181.

Analysis

Guideline I

The Individual’s hearing testimony, in which he provided deceptive or evasive testimony on several occasions, validated the DOE Psychologist’s concerns about his judgement, trustworthiness, and reliability. Moreover, the Record of this proceeding indicates that the Individual has attempted to conceal his past suicidal ideation and to create the impression that he had discontinued using alcohol prior to the CI by providing inconsistent and incomplete accounts of his alcohol and mental health history. This lack of candor continued at the hearing when he testified that his last use of alcohol before the CI occurred about four months earlier on his birthday and when he claimed that he had used alcohol in moderation before the incident which resulted in his hospitalization. Although EAP Psychologist B testified that he did not observe any significant impairments in the Individual’s judgment, reliability, stability, or trustworthiness, he did not challenge the DOE Psychologist’s conclusions which were formed at a later time and with the benefit of additional factual development, including the results of the PEth test. Nor has the Individual presented any expert testimony or opinion indicating that he has received psychotherapy or other treatment that successfully addressed this condition.

The Adjudicative Guidelines provide that 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 indication of emotional instability;
- (e) there is no indication of a current problem.

Guideline I at § 29.

Because the Individual has not shown that he has received sufficient treatment for his condition, § 29(a) does not provide any mitigation of the security concerns raised under Guideline I. I note

that EAP Psychologist B specifically testified that that he did not provide the Individual with in-depth therapy, stating, in reference to his counseling sessions with the Individual, “I don’t know if it was necessarily therapy.” Tr. at 67.

While the Individual met with EAP Psychologist B for approximately 12 counseling sessions, those counseling sessions did not occur on a voluntary basis, and were discontinued in January 2021, when they were no longer mandated by his employer. Accordingly, § 29 (b) does not provide any mitigation of the security concerns raised under Guideline I.

While EAP Psychologist B is a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government, he did not specifically testify that the Individual’s condition is under control or in remission and/or that it has a low probability of recurrence or exacerbation. Accordingly, § 29 (c) does not provide sufficient mitigation of the security concerns raised under Guideline I.

Since I have concluded that the Individual continued to exhibit a lack of judgment, reliability, and trustworthiness at the hearing, I am not convinced that the situation has been resolved, and I find that the Individual continues to show indications of emotional instability. Accordingly, neither § 29(d) nor § 29(e) provide sufficient mitigation of the security concerns raised under Guideline I.

Accordingly, I find that the Individual has not provided adequate evidence of rehabilitation or reformation to mitigate and resolve the security concerns raised under Guideline I.

Guideline G

The Individual’s DUI arrest, PEth test results, and alcohol-related hospitalization raised significant concerns about his alcohol use under Guideline G. The Individual’s repeated provision of unreliable information concerning his alcohol use during the present proceeding have prevented the LSO from resolving the substantial doubts raised by this derogatory information. He did not resolve these concerns at the hearing because he continued to provide untrustworthy and unreliable testimony about his alcohol use and lack of candor during the earlier stages of this proceeding. Although EAP Psychologist B testified that he did not observe any indication that the Individual had an alcohol abuse problem, he did not specifically challenge the DOE Psychologist’s conclusion that the Individual has been engaging in binge drinking that was formed at a later time and with the benefit of additional factual development, including the results of the PEth test and the Individual’s hearing testimony.

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).

Because the Individual has failed to provide reliable and complete information about his alcohol use and current consumption, I am unable to reliably determine the frequency and circumstances concerning his alcohol use and its likeliness to recur. Moreover, the Individual's repeated failure to provide accurate information during the present proceeding, which continued into the hearing, casts doubt on his current reliability, trustworthiness, and judgment. Accordingly, § 23(a) does not provide sufficient mitigation of the security concerns raised under Guideline G.

The Individual does not fully acknowledge his pattern of maladaptive alcohol use and has provided no evidence of meaningful actions taken to overcome this problem. He has therefore not shown that he has been rehabilitated or reformed. Moreover, he has not sufficiently demonstrated a clear and established pattern of abstinence since the record shows that he has been a less than reliable historian and that he has continued using alcohol. Therefore, I find that the Individual has not satisfied the mitigating conditions under § 23(b).

The Individual is not currently participating in alcohol counseling, treatment, or an AA program, and he has not completed a treatment program. Therefore, I find that the Individual has not satisfied the mitigating conditions under § 23(c).

The Individual has not completed an alcohol treatment program and has not sufficiently demonstrated a clear and established pattern of abstinence. Therefore, I find that the Individual has not satisfied the mitigating conditions under § 23(d).

Accordingly, I find that the Individual has not provided adequate evidence of rehabilitation or reformation to mitigate and resolve the security concerns raised under Guideline G by his DUI arrest and history of binge drinking.

V. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and I. 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 Guidelines G and I.

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.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals