*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)		
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Filing Date: December 1, 2021	)	Case No.:	PSH-22-0019
	)		
	)		

Issued: April 28, 2022

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXX (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."[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 not be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In October 2020, the local security office (LSO) was notified that the Individual had entered an inpatient alcohol treatment program. Exhibit (Ex.) 6. The LSO issued the Individual a letter of interrogatory (LOI) concerning her use of alcohol. Ex. 7. In her response to the LOI, the Individual disclosed that she had become dependent on alcohol to cope with stress. *Id.* at 1.

A DOE-contracted psychologist (DOE Psychologist) conducted a clinical interview of the Individual on June 29, 2021. Ex. 8 at 2.[2] At the request of the DOE Psychologist, the Individual provided blood and urine samples for laboratory testing. *Id.* at 9–10. A Medical Doctor (MD) who interpreted the results of the laboratory tests indicated that the blood test results were "congruent

[1] The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

[2] The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibit. For example, the second page of Exhibit 8 is marked as page 1 due to an unnumbered first page. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

with very heavy alcohol use." *Id.* at 38. On July 11, 2021, the DOE Psychologist issued a Psychological Assessment (Report) in which she determined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Severe, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (*DSM-5*). *Id.* at 11–12. The DOE Psychologist also determined that the Individual met the diagnostic criteria for Major Depressive Disorder (MDD), Recurrent Episode, Moderate, under the *DSM-5*. *Id.* at 12.

The LSO issued the Individual a letter in which it notified her that it was suspending her security clearance because it possessed reliable information that created substantial doubt regarding her 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 G (Alcohol Consumption) and Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted twelve exhibits (Ex. 1–12). The Individual submitted eight exhibits (Ind. Ex. 1–8). The Individual testified on her own behalf and offered the testimony of a clinical psychiatrist (Individual's Psychiatrist). Hearing Transcript (Tr.) at 16, 71. The LSO offered the testimony of the DOE Psychologist. *Id.* at 126.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1. "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 DOE Psychologist's determination that the Individual met the diagnostic criteria for AUD, Severe, under the *DSM-5*, the MD's opinion that the laboratory test results provided evidence that the Individual engaged in heavy alcohol consumption, and the Individual's admission to relying on alcohol to cope with stress in her response to the LOI. Ex. 1. The LSO's assertions that the Individual habitually or binge consumed alcohol to the point of impaired judgment and was diagnosed with AUD by the DOE Psychologist justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(c)–(d).

The LSO cited Guideline I (Psychological Conditions) as the other basis for its determination that the Individual was ineligible for access authorization. Ex. 1. "Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline." Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist's opinion that the Individual met the diagnostic criteria for MDD, Recurrent Episode, under the *DSM-5*. Ex. 1. The opinion of the DOE Psychologist that the Individual has a condition that may impair her judgment, stability, reliability, or trustworthiness justifies the LSO's invocation of Guideline I. Adjudicative Guidelines at ¶ 28(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 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 her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

In April 2020, the Individual's husband arranged a medical appointment for the Individual due to concerns about her wellbeing. Ex 7 at 5; Ex. 10 at 4. During her initial consultation with the medical provider on May 4, 2020, the Individual reported psychological symptoms including "fatigue," "excessive guilt and worthlessness," "difficulty concentrating," and an inability to "form complete thoughts." Ex. 10 at 22. The Individual also reported that she engaged in multi-day binge drinking episodes two to three times each month, despite wanting to stop drinking, and she believed that her husband and young daughter "would be better off if she wasn't there." *Id.* The Individual was diagnosed with MDD, Single Episode, Moderate, under the *DSM-5* and prescribed medication. *Id.* at 17.

The Individual reported improvement of her symptoms and success in abstaining from alcohol in several follow-up meetings with the medical provider.[3] *Id.* at 12–17. However, on July 8, 2020, the Individual reported that she was "spiraling down" and had engaged in a "bender" in which she consumed alcohol "all day for two days . . . ." *Id.* at 11. At the recommendation of the medical provider, the Individual began using a journal to track her urges and triggers to consume alcohol. *Id.* at 10. The Individual reported having abstained from alcohol in several subsequent meetings with the medical provider. *Id.* at 6–10.

[3] The Individual discussed with the medical provider "how her insecurities . . . are projected to others, such as her husband . . . ." Ex. 10 at 16. This insight is relevant to the Individual's subsequent attribution of her alcohol misuse to enabling or manipulating behavior by her husband. *See infra* p. 6.

In September 2020, the Individual engaged in a self-described two-week binge drinking episode during which she experienced blackouts. Ex. 11 at 2, 24. The Individual's husband told her that he was concerned for the safety of their young daughter in her care and that he would leave her if she did not obtain treatment. *Id.* The Individual entered inpatient substance abuse treatment on October 6, 2020. *Id.* The Individual disclosed during her inpatient treatment that she engaged in two-week binge drinking episodes in which she consumed a 1.75 liter "handle" of vodka or "big box" of wine every two days, followed by a period of approximately two weeks when she would not consume alcohol.[4] *Id.* at 16. She also described how she would "start a fight with her husband if he would not bring her the alcohol she wanted" and that she would consume her husband's warm beer out of the garage, despite a medical condition exacerbated by carbonated beverages, if no other alcohol was available.[5] *Id.* at 44. The Individual told the inpatient treatment providers that her husband was "very supportive." *Id.* at 19.

The inpatient treatment center diagnosed the Individual with AUD, Severe, under the *DSM-5*. *Id.* at 3, 27. While staying at the inpatient treatment center, the Individual participated in group treatment sessions, individual treatment sessions, alcohol education courses, 12-step study groups, relapse prevention training, and meditation. *Id.* at 26–32. The Individual was discharged on November 5, 2020. *Id.* at 36. The treatment professionals at the inpatient treatment center recommended that the Individual transition to a sober living house upon discharge, enroll in an intensive outpatient treatment program (IOP), and attend ninety Alcoholics Anonymous (AA) meetings in the ninety days following discharge. *Id.* The Individual rejected the recommendation to transition to a sober living house, indicated that she would consider enrolling in an IOP, and committed to attending ninety AA meetings in ninety days and working the AA program. *Id.*

In March 2021, the LSO issued the LOI to the Individual. Ex. 7. In her response, the Individual represented that she had experienced significant stress during the early stages of the COVID-19 pandemic while working from home and caring for her young daughter, during which she did not have in-person contact with family for three months, and that "[t]his stress caused [her] to rely on alcohol to cope[] and [she] became dependent on it." *Id.* at 1. The Individual indicated that she was not pursuing the aftercare recommended by the inpatient treatment center because she found the coping skills she learned through treatment and her self-directed pursuit of AA's 12-step program to be sufficient to control her symptoms. *Id.* at 2. The Individual indicated that she had discontinued the medication prescribed for her MDD and was not experiencing any symptoms. *Id.* at 3–4. She represented that she last consumed alcohol on September 27, 2020. *Id.* at 4.

[4] A separate entry in the Individual's treatment notes indicated that she had consumed half of a handle of vodka or a box of wine every two days over the prior two years. Ex. 11 at 2. During the hearing, the Individual asserted that the inpatient treatment center had misconstrued her description of episodic binges as daily consumption of large amounts of alcohol. Tr. at 121. Even if some of the treatment notes overstated the Individual's alcohol consumption as she claims, it would not have affected my decision because the Individual does not dispute that she engaged in binge drinking episodes that led her to seek treatment. *Id.*

[5] At the hearing, the Individual denied that she reported drinking her husband's "extra beer" from the garage as the treatment notes indicate. Tr. at 93, 101–02. I find it highly unlikely that the inpatient treatment center erroneously noted such a specific anecdote about the Individual's alcohol consumption, particularly since the Individual admitted during the hearing that her husband stored beer in the garage. I also find that the Individual's self-serving denial that she conveyed this information to the inpatient treatment center weighs against her credibility.

The Individual testified at the hearing that she relapsed in April 2021 and resumed consuming alcohol after she claimed her husband brought her a 12-pack of alcoholic seltzers. Tr. at 85. On June 29, 2021, the Individual met with the DOE Psychologist for the clinical interview. Ex. 8 at 2. During the clinical interview, the Individual falsely claimed that she had not consumed alcohol since September 27, 2020. *Id.* at 8; *see also* Tr. at 89 (reflecting the Individual's testimony at the hearing that she untruthfully reported to the DOE Psychologist that she had not consumed alcohol since September 2020 because she "was ashamed"). She also identified herself as an alcoholic and represented that she "can't have that one drink." Ex. 8 at 10.

At the request of the DOE Psychologist, the Individual provided laboratory samples for Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) tests. *Id.* at 9. The EtG test was negative, which the MD interpreted as "strong medical evidence that the [Individual] was abstinent from alcohol during the three days prior to the sample collection." *Id.* at 38. The PEth test was positive at a level of 533 nanograms (ng) per milliliter (mL). *Id.* Based on the negative EtG test, and the half-life of the PEth molecule, the MD calculated that the Individual's PEth level was approximately 799 ng/mL four days prior to the specimen collection. *Id.* The MD opined that the Individual's estimated PEth level was "congruent with very heavy alcohol use" and noted studies finding comparable PEth levels correlated to daily consumption of five to seven alcoholic drinks. *Id.*

The DOE Psychologist also administered two psychological tests to the Individual: the Minnesota Multiphasic Personality Inventory-3 (MMPI-3) and the Beck Depression Inventory-II (BDI-II). *Id.* at 3. The DOE Psychologist found that the Individual "provided a valid profile [on the MMPI-3], without evidence of either over- or underreporting." *Id.* at 9. The MMPI-3 test results showed "a number of elevated scales related to lack of energy or pleasure, excessive worry, and feeling disassociated from others." *Id.* at 9. The Individual "endorsed very few symptoms associated with Depression" in her response to the BDI-II. *Id.* at 9. In addition to the psychological test results, the DOE Psychologist noted that the Individual's "sad and tearful presentation during [the clinical interview], [] deprecating self-references, and [] descriptions of feeling isolated and lonely are consistent with symptoms of depression." *Id.* at 11.

On July 11, 2021, the DOE Psychologist issued her Report in which she determined that the Individual met the diagnostic criteria for AUD, Severe, and MDD, Recurrent Episode, Moderate, under the *DSM-5*. *Id.* at 11–12. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation from AUD by participating in an IOP of appropriate intensity for at least twelve weeks, followed by aftercare for at least nine months. *Id.* at 12. She further recommended that the aftercare include individualized counseling and at least three AA meetings weekly, and that the Individual demonstrate her abstinence from alcohol through bi-monthly PEth tests. *Id.* Regarding the Individual's MDD, the DOE Psychologist recommended that she be re-evaluated for medication and receive counseling. *Id.*

In October 2021, the Individual's husband filed for divorce. Tr. at 80, 97–98. The Individual provided two blood samples for PEth testing pursuant to court orders related to the divorce. *Id.* at 98–99, 105. According to the Individual, the results of the first PEth test from an early-December

sample were negative. *Id.* at 99. However, the results of the second PEth test from a mid-December sample were positive.[6] *Id.* at 98, 105.

In November 2021, the Individual was evaluated by a substance abuse treatment center and enrolled in an IOP. Ind. Ex. 1. During an intake evaluation, the Individual reported having consumed one box of wine every three days until October 18, 2021, when she represented that she stopped consuming alcohol. *Id.* at 3. The Individual claimed that her husband was "manipulating her and trying to make it appear that [she] is an active alcoholic and unfit parent." *Id.* at 5. According to the Individual, her husband would "buy[] her alcohol and then judge[] and condemn[] her for using it." *Id.* The Individual expressed "ambivalence about whether she is an 'alcoholic'" and asserted that she was forced to accept "that label" by her husband and the inpatient treatment center. *Id.*

A social worker employed by the substance abuse treatment center diagnosed her with "Adjustment Disorder with mixed anxiety and depressed mood." Ind. Ex. 1 at 17. As part of her participation in the IOP, the Individual provided samples for eight EtG tests from November 18, 2021, to January 25, 2022, each of which was negative for traces of alcohol consumption. Ind. Ex. 2. The Individual completed the IOP in February 2022. Ind. Ex. 1 at 22; Tr. at 75.

After completing the IOP, the Individual enrolled in counseling. Tr. at 76–77. The Individual testified at the hearing that this counseling will support her recovery and abstinence from alcohol. *Id.* at 80. The Individual has learned techniques, such as positive thinking, identifying and naming feelings, and calling friends, to manage stress without resorting to alcohol. *Id.* at 108–09. She attributed her misuse of alcohol to enabling or manipulative behavior from her husband and isolation during the COVID-19 pandemic, and she believes that the coping techniques she has learned will allow her to abstain from alcohol in the future. *Id.* at 77, 80, 100–01. The Individual has not experienced depressive symptoms since participating in the IOP. *Id.* at 116–17.

In March 2022, the Individual met with the Individual's Psychiatrist for a two-hour mental status examination. Ind. Ex. 4 at 4; Tr. at 17. Based on his review of the Report, the Individual's records from the substance abuse treatment center, time and attendance records and performance evaluations for the Individual, and the information provided by the Individual in the mental status examination, the Individual's Psychiatrist concluded that the Individual's AUD was in early remission and that it did not impair her judgment, reliability, and trustworthiness.[7] Ind. Ex. 4 at 4–6. In reaching this conclusion, the Individual's Psychiatrist relied on, among other things, the

[6] The Individual testified that she had not consumed alcohol since October 2021 and that the second test was positive because the sample was collected through "a different type of blood draw." Tr. at 99, 105, 118. The Individual did not identify any foundation for her belief, and has no demonstrated expertise in conducting PEth tests or interpreting their results. Accordingly, I assigned her claim no weight because her opinion as to why the first court-ordered PEth test would fail to capture evidence of alcohol consumption from October 2021 while the second PEth test would capture such evidence is purely speculative.

[7] The Individual's Psychiatrist determined that the Individual met the diagnostic criteria for AUD, Moderate, rather than AUD, Severe, as the DOE Psychologist determined. Ind. Ex. 4 at 5. This difference in the severity of the diagnosis did not affect my decision as there is no indication that either expert's treatment recommendations or prognosis for the Individual's recovery would have changed had they adopted the other expert's opinion as to the severity of the Individual's AUD. *See id.* (reflecting the Individual's Psychiatrist's opinion that "quibbling about individual [diagnostic] criteria is moot").

Individual's positive employment record, ability to perform her job even during the months in which she engaged in her heaviest binge drinking episodes, and the absence of medical, criminal, or other adverse events commonly observed in habitual heavy alcohol consumers. *Id.* at 5; *see also* Ind. Exs. 5–7 (reflecting that the Individual received positive performance reviews during a period in which she engaged in binge drinking).

At the hearing, the Individual's Psychiatrist testified that he was "astonished" at the IOP's focus on the Individual's "marital problems as a source of all her troubles," and that "they did her a disservice" with this treatment focus. Tr. at 35. He opined that it would be "important for her" to attend AA meetings to support her recovery. *Id.* at 43, 45. He also indicated that the Individual was unduly focused on separating from her husband as resolving her AUD and "not yet persuaded . . . about actually understanding the dynamics of alcoholism and getting a handle on it." *Id.* at 43–44. However, he opined that the Individual had exercised sound judgment by seeking treatment and that he would expect her to "get back on the wagon" if she relapsed in the future. *Id.* at 58, 66.

The Individual's Psychiatrist determined that the Individual was misdiagnosed with MDD, and that the DOE Psychologist had failed to consider diagnostic Criterion C for MDD which indicates that a depressive episode should only be found when "[t]he episode is not attributable to the physiological effects of a substance . . . ." Ind. Ex. 4 at 6; AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 161 (5th ed. 2013). He based this conclusion on the absence of the Individual's depressive symptoms during her inpatient treatment following detoxification despite not being administered an antidepressant. Tr. at 32–34; Ind. Ex. 4 at 6–7. The Individual's Psychiatrist also noted that the psychological testing administered by the DOE Psychologist did not support her diagnosis because the BDI-II scales were not elevated and there were not "impressive elevations of scales usually associated with depression" in the results of the MMPI-3. Tr. at 32; Ind. Ex. 4 at 6.

The Individual's Psychiatrist also disagreed with the IOP's diagnosis of the Individual with Adjustment Disorder on similar grounds and noted that her psychological symptoms only reemerged after her relapse in April 2021. Ind. Ex. 4 at 7. The Individual's Psychiatrist opined that the Individual did not have a psychological condition that impaired her judgment, reliability, or trustworthiness, and that the Individual's depressive symptoms could be controlled through a recovery program for AUD and abstinence from alcohol. *Id.*

At the hearing, the DOE Psychologist opined that the Individual had not demonstrated rehabilitation or reformation from her AUD and that her prognosis for recovery is "very guarded." *Id.* at 134–35. In furtherance of this conclusion, she opined that the Individual's participation in the IOP was "counterproductive" because it enabled her in minimizing her AUD, the Individual had minimized the severity of her AUD to the Individual's Psychiatrist, and the Individual's self-reported period of abstinence was not reliably substantiated. *Id.* at 128, 132–34, 136–37. While the DOE Psychologist acknowledged that the psychological tests that she administered to the Individual did not produce elevated depression scales, she nevertheless found evidence of MDD based on elevation of "scales that are concomitant with depression" and the Individual's presentation in the clinical interview. *Id.* at 131–32. The DOE Psychologist opined that the Individual had "not presented [at the hearing] as depressed . . . in the way that she did when [the

DOE Psychologist] evaluated her," but that she did not have sufficient information to update the MDD diagnosis or to offer a prognosis. *Id.* at 149–51.

V. ANALYSIS

A. Guideline G

The LSO's allegation that the Individual habitually or binge consumed alcohol to the point of impaired judgment and the DOE Psychologist's diagnosis of the Individual with AUD justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(c)–(d). 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; 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 first mitigating condition under Guideline G is not applicable because the Individual's problematic consumption of alcohol was frequent, recent, did not happen under unusual circumstances, and seems likely to recur. The Individual admitted to having used alcohol as recently as October 2021, tested positive for alcohol use in December 2021, and engaged in problematic drinking, including numerous binge episodes, for significant portions of 2020 and 2021. Thus, I find that the Individual's behaviors giving rise to the security concerns under Guideline G were frequent and recent.

Although the Individual asserts that her misuse of alcohol is unlikely to recur in the absence of the stress and isolation she experienced during the COVID-19 pandemic and the purportedly manipulative behavior by her husband, I do not agree. Although stress and isolation during the initial stages of the COVID-19 pandemic may have influenced the Individual's drinking habits, there is no evidence that these factors were present during her relapse following treatment in 2021. The Individual's assertion that her husband's "manipulation" induced her to relapse and engage in problematic drinking is not supported by the record. The Individual consistently indicated that her husband was concerned about her problematic drinking and had threatened to leave her if she did not seek treatment. She reported this to the inpatient treatment center, in response to the LOI, and to the DOE Psychologist. It was only after the Individual's husband filed for divorce that she

claimed that he had enabled her alcohol misuse. Based on the timing of the Individual's changed account of her husband's influence on her drinking, and the opinion of the Individual's Psychiatrist and DOE Psychologist that the Individual minimized her AUD by attributing fault for her alcohol misuse to her husband, I do not find her claims regarding her husband credible. Thus, I find the first mitigating condition under Guideline G inapplicable. *Id.* at ¶ 23(a)

The second mitigating condition is not applicable because the Individual has not established a clear and established pattern of modified consumption or abstinence. The Individual's claimed five months of abstinence from alcohol prior to the hearing is insufficient to constitute a clear and established pattern of modified consumption, particularly in light of her history of relapse. The Individual's EtG testing from November 2021 to January 2022 is only moderate evidence of her claimed abstinence because the results of the alcohol testing requested by the DOE Psychologist showed that the Individual can restrain herself from drinking for several days prior to an EtG test to produce a negative result even while engaging in heavy alcohol consumption. Moreover, the Individual's positive court-ordered PEth test in connection with her divorce in December 2021 calls even this limited period of abstinence from alcohol into question. The Individual's claimed period of abstinence is too short and insufficiently supported for me to conclude that the second mitigating condition under Guideline G is applicable in this case. *Id.* at ¶ 23(b).

The third mitigating condition is inapplicable because it is undisputed that the Individual relapsed following inpatient treatment. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual did not pursue aftercare and relapsed following her inpatient treatment. Although the Individual participated in an IOP, this treatment does not satisfy the mitigating condition because both the DOE Psychologist and the Individual's Psychiatrist described the program as ineffective and counterproductive to the Individual's recovery. Moreover, the Individual has not actively participated in AA as recommended by the Individual's Psychiatrist and, for the reasons described above, has not demonstrated a clear and established pattern of modified consumption or abstinence. Thus, the fourth mitigating condition under Guideline G is inapplicable. *Id.* at ¶ 23(d).

The Individual does not dispute that she engaged in binge drinking episodes and relapsed after treatment. Both the Individual's Psychiatrist and the DOE Psychologist agree that she meets the diagnostic criteria for AUD, and the Individual has not fully complied with the DOE Psychologist's treatment recommendations or attended AA meetings which the Individual's Psychiatrist opined would aid in her recovery. She has also failed to demonstrate a clear and established pattern of modified consumption or abstinence. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Psychological Conditions

The DOE Psychologist's opinion that the Individual meets the diagnostic criteria for MDD under the *DSM-5*, and that this condition may impair her judgment, stability, reliability, or trustworthiness, raises security concerns under Guideline I. Adjudicative Guidelines at ¶ 28(b). 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) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; or,
(e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29(a)–(e).

The Individual disputes the accuracy of the DOE Psychologist's diagnosis and has not pursued any treatment for MDD since October 2020. Thus, the first three mitigating conditions under Guideline I are inapplicable. *Id.* at ¶ 29(a)–(c).

The Individual's Psychiatrist's opinion that the DOE Psychologist misdiagnosed the Individual by attributing the effects of the Individual's alcohol consumption to symptoms of MDD, and ignoring a *DSM-5* diagnostic criterion which requires that episodes of depression "not [be] due to the direct physiological effects of a substance" in order to constitute a symptom of MDD, is plausible. His opinion that the results of the psychological testing administered by the DOE Psychologist, which were not fully supportive of her diagnosis, were evidence that the Individual was not suffering from MDD is likewise not without merit.

However, "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a). Establishing that the DOE Psychologist's diagnosis of the Individual was not unimpeachable falls short of meeting the Individual's heavy burden. The DOE Psychologist's opinion that the Individual used alcohol to control the symptoms of her MDD is not without support in the record and is a plausible interpretation of the information that the Individual provided to her and to treatment providers.

Faced with two plausible expert opinions, and in light of the DOE Psychologist's testimony at the hearing that her opinion concerning the Individual's MDD is unchanged, I find that the Individual has not established that the security concerns related to her diagnosis are resolved or that there is no indication of a current problem. Adjudicative Guidelines at ¶ 29(d)–(e). Therefore, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G and I 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's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals