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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: January 31, 2022) Case No.: PSH-22-0047
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Issued: May 11, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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, entitled “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

On November 2, 2019, police arrested the Individual and charged him with Driving Under the Influence (DUI). Ex. 7 at 1. The arrest report for this incident indicates that police found the Individual unconscious behind the wheel of his running vehicle in a parking lot. Ex. 7 at 5. After the officers were able to awaken the Individual, he “refused all DUI testing and invoked his right to remain silent and not answer any questions.” Ex. 7 at 5. However, one arresting officer reported that the Individual “had a strong odor of an alcoholic beverage on his breath, red blood shot eyes, and was very unsteady on his feet.” Ex. 7 at 5. Another arresting officer reported that the Individual was “unsteady on his feet, blood shot eyes, and had an odor of alcoholic beverage on his person.” Ex. 7 at 6. At the time of this arrest, the Individual maintained a DOE security clearance and a Human Reliability Program (HRP) certification and on November 6, 2019, the Individual provided a “Statement of Incident” to a Local Security Office (LSO) in which he stated:

¹ Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

I am writing this statement after being removed for Cause from the [HRP]. I want to say first and for most, that I'm very sorry and ashamed for the circumstance that occurred on 11/02/2019 and into the morning of 11/03/2019. I take full responsibility for all my actions and I have no excuses. This is very embarrassing to talk about.

Ex. 7 at 1, 3-4. The Individual further admitted that he had consumed an unspecified amount of alcohol prior to this incident and stated: "I can tell you beyond a shadow of a doubt, that in the future I will never be involved in an incident like this again." Ex. 7 at 3-4. On December 16, 2019, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 9 at 1. In his December 19, 2019, response to this LOI (the First LOI Response) the Individual repeated many of his statements from the Statement of Incident. However, he admitted consuming three light beers prior to his DUI arrest. Ex. 9 at 16.

On February 24, 2019, less than four months after his DUI arrest, police arrested the Individual and charged him with Public Intoxication (PI).² Ex. 6 at 10; Ex. 8 at 1. An Affidavit signed by the arresting officer states that he found the Individual unconscious behind the wheel of his vehicle parked on the shoulder of the road. Ex. 6 at 10. The affidavit further states: "An open container of Bud Light Beer was observed partially full in the cup holder. Officer woke [the Individual] up and had him exit the vehicle. [The Individual] was unsteady on his feet, had watery bloodshot eyes, thick and mumbled speech, and the smell of alcohol about his breath and person." Ex. 6 at 10.

On April 6, 2020, the Individual submitted a "Statement of Incident" to the LSO concerning the February 24, 2019, PI arrest in which he again stated "I want to say first and for most, that I'm very sorry and ashamed for the circumstance that occurred. I take full responsibility for all my actions and I have no excuses. This is very embarrassing to talk about." Ex. 6 at 6-7. The Individual then claimed that the incident occurred when he was "under an extreme amount of stress." Ex. 6 at 7. The Individual further claimed that after a heated argument with his estranged spouse, he began to feel "sick" and pulled off the road, where he had "a panic or anxiety attack" which was the last thing he remembered before a police officer asked him to step out of his truck. Ex. 6 at 7. The Individual claimed that the officer had searched his truck for several minutes before returning with an open beer can. Ex. 6 at 7. He further claimed:

I told the officer I did not even see this in my truck. I was shocked. I don't even drink Bud Lite. My friend must have left it in there while on my truck.

Ex. 6 at 7.

After the Individual's February 24, 2020, PI arrest, the LSO issued a second LOI to the Individual.³ The Individual submitted a response to this LOI in which he repeated many of his statements from

² The Individual was still on administrative leave from his DUI arrest when the PI arrest occurred. Ex. 10 at 4.

³ The date on which this LOI was issued to the Individual is not available, because the DOE has not submitted a copy of the LOI into the Record, but rather has only submitted an undated copy of the Individual's response to that LOI. Ex. 8.

the April 6, 2020, Statement of Incident. Ex. 8. The Individual, however, admitted that he had one Miller Lite beer prior to the PI arrest. Ex. 8 at 3. The Individual further stated that he had consumed alcohol on only three occasions since he submitted the First LOI Response: on December 5, 2019, February 2, 2020, and February 23, 2020. Ex. 8 at 3. When the LOI asked the Individual how often he consumes alcohol to the point of intoxication, he responded by stating: “I do not, and in the future until I am released medically from my doctor, I don't have any plans of drinking at all. I don't have any desire to drink and I don't want to interfere with my medication.” Ex. 8 at 4. The Individual further reported that he had been receiving treatment from a family doctor for anxiety and panic attacks and had been receiving counseling, with a strong focus on stress management, through his Employee Assistance Program (EAP). Ex. 8 at 4, 6. The Individual indicated that he had been diagnosed with Panic Disorder and Adjustment Disorder with Anxiety. Ex. 8 at 6.

Because of the Individual's two recent alcohol-related arrests, the LSO requested that he undergo an evaluation by a DOE-contracted Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on July 28, 2021, and issued a report of her findings (the Report) on August 28, 2021. Ex. 10 at 2, 7, 12. According to the Report, the Individual repeated his claim that he had only consumed one beer prior to his PI arrest during the CI. Ex. 10 at 4. The Psychologist further reported that, during the CI, the Individual claimed that he had not consumed any alcohol since his PI arrest.⁴ Ex. 10 at 5.

In addition to interviewing the Individual, the Psychologist reviewed the Individual's personnel security file, and provided for the administration of four tests to the Individual on July 28, 2021: a standardized psychological assessment, the Minnesota Multiphasic Personality Inventory (MMPI); an Ethyl Glucuronide (EtG) urine test (which detects alcohol up to 80 hours after any alcoholic beverage is consumed); an Ethyl Sulfate (EtS) urine test (which tests for alcohol use during the previous three days); and a Phosphatidylethanol (PEth) blood test (which detects alcohol use during the previous 28 days). Ex. 10 at 5. The initial PEth test result was invalidated, so the Individual was administered a repeat test on August 5, 2021, which resulted in a valid result. Ex. 10 at 5. All three laboratory test results were strongly positive, indicating that the Individual had been using alcohol, despite his statements to the contrary during the CI. Ex. 10 at 5.

The Psychologist found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) for two disorders: Alcohol Use Disorder, Severe (AUD) and Narcissistic Personality Disorder (NPD), which the Psychologist opined “to be a contributing factor in his poor judgment and deceitfulness and his inclination to conduct himself as if rules do not apply to him.” Ex. 10 at 10. To address the Individual's AUD, the Psychologist recommended that the Individual abstain from the use of alcohol for 12 months, and actively participate in Alcoholics Anonymous (AA) or another self-help program such as SMART, Motivation-Enhanced Therapy, or 12-step Facilitation Therapy. Ex. 10 at 10. The Psychologist did not recommend any specific treatment or therapy for the Individual's NPD.

⁴ The Individual further stated during the CI that he did not intend to use alcohol until he was medically cleared by his doctor because he did not want alcohol to interfere with his anxiety medications. Ex. 10 at 5.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that his security clearance was suspended and 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 four witnesses: the Individual, his former supervisor, his coworker, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0047 (hereinafter cited as "Tr."). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as "Ex."). The Individual submitted 11 exhibits, marked as Exhibits A through K.⁵

The Individual's Exhibit A is a series of documents which the Individual claims are the test results from a series of self-administered breath alcohol tests. Each test result is negative and has a picture of an individual in the act of providing a breath sample. If accurate, these test results indicate that the Individual abstained from alcohol use from February 17, 2020, to November 8, 2020.

The Individual's Exhibit B is a laboratory report of a leg hair test conducted on October 28, 2020, indicating that the sample tested negative for alcohol use. Ex. B at 1.

The Individual's Exhibit E is a letter to the Individual, dated December 4, 2020, from the criminal defense attorney who represented him in his DUI and PI cases. Ex. E at 1. This letter indicates that the Individual accepted a plea arrangement in which he pled guilty to Reckless Driving and then entered a pretrial diversion program which he completed, therefore allowing the DUI and PI charges to be dismissed. Ex. E at 1-2.

The Individual's Exhibit F is a medical report indicating the results of a medical examination administered to the Individual as part of HRP certification.

The Individual's Exhibit G is a document entitled "Statement Regarding [the Individual's] Medical and Behavioral Condition" (the SRIMBC). Ex. G at 1. It is not typed on any letterhead. Ex. G at 1. Although the document is not signed or dated, it contains a signature block indicating that its author is a Licensed Professional Counselor (LPC) and a Certified Employee Assistance Professional. Ex. G at 1. The SRIMBC indicates that the Individual "has difficulty standing due to vertigo and imbalance issues; breathing (post COVID); concentrating, holding objects, writing

⁵ Several of these exhibits were of little or no relevance to the issues before me. The Individual's Ex. C1 is a Final Judgment of Divorce dated September 8, 2021. Ex. C2 is a Mediated Parenting Plan Order. The Individual's Exhibit D indicates he received an honorable discharge from the Armed Forces and had received several prestigious commendations and medals for his service. The Individual's Exhibit I is a transcript indicating that the Individual had attended a military university and had maintained an impressive grade point average. Ex. J is a transcript indicating the Individual had earned a master's degree in business administration. The Individual's Exhibit K indicates that the Individual has completed several DOE, military, law enforcement and Homeland Security Department training courses.

and other fine motor skills due to trembling; remembering and sleeping (insomnia).” Ex. G at 1. The SRIMBC indicates that its author began counseling the Individual on November 8, 2019, for marital discord and occupational problems. She further noted that the Individual experienced elevated anxiety and panic attacks. She noted that the Individual has missed several appointments “due to forgetfulness,” and “complains of memory problems, poor concentration and fatigue.” [sic] Ex. G at 1. The SRIMBC further states: “Trying to deal with the pressures and responsibilities of a job at this time would be detrimental to his mental and physical health, in my opinion. He is overly anxious and has been through a very intense and traumatic life/identity change from which he needs to recover.” Ex. G at 1.

Exhibit H is a letter dated May 22, 2020, from a Physician’s Assistant indicating that the Individual was being treated for Panic Disorder and Adjustment Disorder.

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 Adjudicative Guideline G (Alcohol Consumption), the LSO cites the Individual’s DUI and PI arrests and the Psychologist’s finding that he meets the DSM-5 criteria for AUD. This information adequately justifies the LSO’s invocation of Adjudicative 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.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern, under Adjudicative 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,” “diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder,” “failure to follow treatment advice one diagnosed,” and “alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.” Adjudicative Guidelines at ¶¶ 22(a),(d),(e), and (f).

Under Adjudicative Guideline I (Psychological Conditions), the LSO cites the Psychologist’s conclusion that the Individual has NPD, which she found to be a contributing factor in his poor judgment and deceitfulness and his inclination to conduct himself as if rules do not apply to him. 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.” Adjudicative Guidelines at ¶ 27. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness.” 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 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

At the Hearing, rather than trying to show that he had mitigated the security concerns raised by his two alcohol-related arrests and the Psychologist's finding that he met the DSM-5 criteria for AUD and NPD, the Individual attempted to challenge the Psychologist's conclusions and the veracity of the police reports upon which his DUI and PI arrests were based.

The Individual's former supervisor testified that he has known the Individual for 22 years and has often had daily contact with him. Tr. at 12-13. He socializes with the Individual. Tr. at 16. The former supervisor testified he was unaware of any alcohol abuse by the Individual. Tr. at 17. He believes the Individual to be reliable, trustworthy, and loyal. Tr. at 18. He further testified that he trusts the Individual's judgement and decision-making ability. Tr. at 18.

A coworker and friend of the Individual testified that he has known the Individual for 22 years and has often had daily contact with him. Tr. at 25. The coworker testified he was unaware of any alcohol abuse by the Individual. Tr. at 26, 30-31. He believes the Individual to be reliable, trustworthy, and loyal. Tr. at 28. He further testified that he trusts the Individual's judgement and decision-making ability. Tr. at 28.

The Individual testified that he served two tours of combat duty. Tr. at 35. He is also recovering from a severe long-term coronavirus infection. Tr. at 38, 58. Since he started working as a DOE contractor in 2006, he has been subject to frequent routine psychological evaluations, and yearly MMPIs. Tr. at 40-41, 45. He maintained a DOE security clearance and an HRP certification from

2006 until 2019. Tr. at 41-42. He testified that he began having panic attacks and developed an anxiety disorder after the failure of his second marriage in 2019. Tr. at 46.

The Individual testified that his DUI arrest was preceded by a particularly disturbing argument with his estranged wife in which it became apparent that their marriage was ending. Tr. at 47. He claimed that he started having a “panic anxiety attack” while driving and pulled into a parking lot to answer a telephone call, and that the next thing he knew, police officers were removing him from his vehicle and questioning him. Tr. at 47-48. He was then arrested for “suspicion of DUI.” Tr. at 48. As a result of this arrest, he testified, he began counseling with the LPC. Tr. at 48. He claimed that the LPC administered an Alcohol Use Disorder Identification Test (AUDIT) to him, but did not diagnose the Individual with AUD.⁶ Tr. at 49.

The Individual testified that on the day of his PI arrest, he was experiencing “a lot of panic and anxiety.” Tr. at 50. After arguing with his estranged wife, he visited a friend who helped him tune his truck. Tr. at 50. The Individual testified that his friend left a can of beer in the back of the Individual’s truck at this time. Tr. at 50. He further claimed that on the way home from his friend’s house, he began having a panic attack and pulled his truck to the side of the road. Tr. at 51. The next thing he knew, he claimed, a police officer was asking him if he was OK. Tr. at 51. The police officer searched his car and found a can of beer. Tr. at 51. The officer arrested him. Tr. at 51. The Individual claimed that after the PI arrest, he had an “alcohol and drug assessment” by a licensed drug and alcohol counselor who did not direct him to undergo drug or alcohol treatment. Tr. at 52-53.

The Individual testified that, on the advice of counsel, he “voluntarily” began using a portable Breathalyzer from February 27, 2020, to December 2020.⁷ Tr. at 54, 71. He also had a hair follicle test done during that period which was negative for alcohol use. Tr. at 55. The Individual testified that he did not consume alcohol or experience cravings for alcohol during this period and did not consume alcohol until January 2021, when he had two or three beers. Tr. at 54-55, 57-58.

The Individual admitted that he had “lied” to the Psychologist about his drinking during the CI, because he “wanted a favorable outcome.” Tr. at 61, 74. He claimed that while he had been using alcohol before the CI, he was not “drinking egregiously at the time.” Tr. at 61. During cross-examination, the Individual claimed that his high PEth test result was not due to his use of alcohol

⁶ The AUDIT requires the subject to answer a series of questions. Tr. at 105. If the subject does not provide accurate responses to these questions, the result generated by this screening test will not be accurate. Tr. at 105, 133.

⁷ The results of his portable Breathalyzer testing appear in the record as Exhibit A. Tr. at 54. According to the Individual:

So, seven times a day, if -- I believe the schedule, like 6:30, 11:00, 2:30, 5:00, 7:00 and 11:00 at night, I would take a Breathalyzer that utilizes my smart phone, and a very sensitive device, IBAC -- it's called IBAC, I-B-A-C. Which is, basically it's hooked to your smart phone, and it takes a picture of you while you blow in the machine and it changes colors. So, basically, it reinforces that you're the person that's taking the test. And so there was never an eight-hour period of time when I went without -- the longest period of time I went was from eleven o'clock at night to 6:30 in the morning without taking one of those tests.

Tr. at 55-56.

prior to the CI, but rather was the result of his high consumption of alcohol between the CI and his retest which occurred seven days after the CI. Tr. at 83. He subsequently denied that he had been “on a bender” between the CI and his PEth retest. Tr. at 90.

The Individual admitted he had received the Report. Tr. at 67-68. The Individual admitted that he continues to use alcohol and that he consumed alcohol two days before the hearing. Tr. at 65-67, 88. When the DOE Counsel asked the Individual why he did not follow the Psychologist’s recommendations in the Report, the Individual stated: “I didn't really understand if it was a recommendation or if there was an actual doctor, like, for DOE saying, ‘Hey, this is what you -- this is what we want you to do. This is what we need you to do.’” Tr. at 68. He has not attended any AA meetings. Tr. at 69. He attends individual counseling sessions on a biweekly basis. Tr. at 69. The Individual testified that he does not agree with the Psychologist’s conclusion that he has AUD because, in his words: “the diagnosis is not of an appropriate reflection of my alcohol use, or I guess subsequent allegation of abuse.” Tr. at 86-87, 93. The Individual testified that he intends to continue consuming alcohol “unless I am advised otherwise.” Tr. at 88. He then said he would stop using alcohol if “the doctor” recommends that he do so. Tr. at 89. He testified that he stopped drinking for ten months after his arrests, but “missed his freedom to be free” to consume beer. Tr. at 89. He claimed that an addiction specialist and the LPC had conducted alcohol assessments of him and had not found that he had AUD. Tr. at 94-96. He claimed that the addiction specialist evaluated him on January 7, 2020, prior to his PI arrest. Tr. at 95.

The Individual testified that he had been evaluated for Post-Traumatic Stress Disorder (PTSD) in 2019, and that he has a 70 percent disability rating from the Veterans Administration for PTSD with traumatic brain injury. Tr. at 79-82. He further testified that he has been diagnosed with “panic and anxiety disorder.” Tr. at 81. The Individual disagreed with the Psychologist’s conclusion that he has NPD because, in his words: “I don't show or have I proven to anybody or shown anybody over the years that that's the kind of person or character that I portray or the kind of way I conduct myself in life.” Tr. at 87.

The Psychologist testified at the Hearing after observing the testimony of each of the other witnesses. The Psychologist testified that the Individual’s diagnosis is still AUD, and that the Individual is not in remission because he continues to use alcohol. Tr. at 120-121. The Psychologist testified that the Individual had met six of the DSM-5 criteria for AUD. Tr. at 112-115. She further noted that the Individual had not complied with any of her treatment recommendations. Tr. at 121, 129. The Psychologist testified that, during the CI, the Individual stated that he had not consumed alcohol for over a year and that this statement was contradicted by his urine test results which indicated that the Individual had been engaged in “heavy drinking.” Tr. at 111-112.

The Psychologist testified that the Individual met four of the DSM-5 criteria for NPD. Tr. at 117-118. The Psychologist explained the characteristics of an Individual with NPD:

[T]he thing that guides the narcissistic personality disordered person . . . is the maintenance of their -- the impression they're making on others and to themselves. So, at the cost of . . . honesty, at the cost of admitting mistakes and making important changes to prevent those mistakes from happening again, someone with

a narcissistic personality disorder does whatever they can to avoid coming into contact with . . . those problems. So that inhibits their judgment because . . . as we've seen or heard from [the Individual] today, he made the decision to be dishonest with me in the evaluation based on his concerns about losing his job. So that judgment is clouded by what [the Individual] wants. He wants to maintain his status. He's less concerned with the fact that he's being deceitful and that he may actually consider having a problem that he could -- he could actually work on and benefit from addressing. So it's concerning about a person's judgment, it's concerning about a person's reliability. Because I feel that a person that has narcissistic personality disorder, who is sort of at all costs trying to maintain a good reputation and to avoid seeing faults in themselves, is probably at risk for being blackmailed. If there's information about somebody, you know, if there's negative information, [the Individual] is going to do what he can to prevent that information from getting out, as we've seen in his behavior in this evaluation process.

Tr. at 119-120. The Psychologist further testified: [B]ased on testimony today, [the Individual] is willing to omit or even lie about his alcohol use to mental health professionals in order to avoid judgment or consequences.”⁸ Tr. at 133.

V. Analysis

Adjudicative Guideline G

The Individual has a history of two alcohol-related arrests and a diagnosis of AUD, Severe, by a psychologist. This derogatory information raises significant security concerns about the Individual under Guideline G. The Individual has attempted to contradict this derogatory information by contending that: his two-alcohol related arrests resulted from panic attacks rather than excessive alcohol consumption; the Psychologist had misdiagnosed him with AUD; the laboratory testing was not accurate; and Exhibit A shows that he had abstained from using alcohol from February 27, 2020, to November 8, 2020.

The Individual’s assertion that he had not been abusing alcohol prior to both of his alcohol-related arrests is not credible. The only evidentiary support offered by the Individual for this assertion is Exhibit E, a letter from an attorney indicating that the Individual accepted a plea arrangement for both his DUI and PI arrests in which he pled guilty to Reckless Driving, his own hearing testimony, his Statements of Incident provided to the LSO, and his responses to the LOI. I do not find this evidence to be persuasive. The fact that the Individual was able to obtain a plea agreement does not contradict the sworn affidavits of the police officers who observed the Individual’s alcohol intoxication during both incidents. I assign no evidentiary weight to the Individual’s uncorroborated hearing testimony, Statements of Incident, and response to the LOI, since I found the Individual to be a particularly unreliable witness and I have grave concerns about his credibility. This concern is based upon several factors. The first factor is the Individual’s false

⁸ The Psychologist noted that the Individual had “done some very noble, brave, honorable things” during his military service. Tr. at 116. She opined, however, that the Individual used “those experiences to manipulate situations.” Tr. at 117.

statement during the CI that he had not consumed alcohol for over a year, which he subsequently admitted (after being discredited by laboratory testing) he had made because he wanted a “favorable outcome.” The second factor is the Individual’s difficult-to-believe accounts of the circumstances which led to his two alcohol-related arrests. The third factor is the Individual’s hearing testimony that he had not engaged in heavy alcohol consumption prior to the CI, when in fact two laboratory tests administered to the Individual on the date of the CI, the EtG and EtS, both indicated that the Individual had recently engaged in heavy alcohol consumption.

The Individual questioned the Psychologist’s finding that he meets the DSM-5 criteria for AUD, Severe, without providing hearing testimony or an affidavit from any expert witnesses or mental health providers who had treated the Individual. While the Individual submitted an unsigned, undated statement purportedly authored by the LPC, that statement does not address any substance abuse issues, does not indicate that he had been evaluated for substance abuse issues, and does not state any opinion concerning whether the Individual has been appropriately diagnosed with AUD. Nor does this statement indicate whether its author was qualified to make such an assessment. The Individual also testified that a substance abuse specialist had evaluated him in January 2020 and found no evidence of any substance abuse issues. However, the Individual did not provide any evidence corroborating his assertions that this evaluation had occurred and that it had shown that he did not have AUD, other than his own, credibility-challenged, hearsay testimony. Finally, the Individual notes that he had maintained an HRP certification from 2006 until 2019, during which he had been under constant monitoring for substance abuse issues without the HRP concluding that he had AUD. This contention ignores the fact that the HRP has suspended his HRP certification because of concerns arising from his alcohol-related arrests.

I do not find persuasive the Individual’s suggestion that the three laboratory reports indicating that he had engaged in heavy alcohol consumption were not accurate. The Individual has not provided any expert testimony in support of this assertion. Nor has he submitted any other evidence indicating that these test results were invalid. I find these laboratory test results to be highly credible, given the fact that they each provided a very similar conclusion.

While Exhibit A shows that the Individual abstained from alcohol use from February 28, 2020, to November 8, 2020, this evidence does not contradict the Individual’s alcohol history or AUD diagnosis, since the Individual resumed drinking, as evidenced by the laboratory testing conducted in July and August 2021, and continues to consume alcohol as evidenced by his hearing testimony.

Accordingly, the Individual has not shown that the derogatory information concerning him (two alcohol-related arrests; the AUD, Severe, diagnosis; and three separate laboratory tests indicating that he had likely been engaging in heavy alcohol consumption) was not reliable. Nor has the Individual provided any evidence indicating that he has mitigated the security concerns raised under Guideline G, since he does not recognize that he has AUD, admits that he continues to use alcohol, and has not attended any AA or other self-help group meetings, therefore failing to comply with the Psychologist’s treatment recommendations. For these reasons, I conclude that none of the mitigating conditions set forth at Adjudicative Guideline G at ¶ 23 are present in the instant case. I therefore find that the Individual has neither resolved nor mitigated the security concerns raised under Guideline G by his alcohol-related arrests and his AUD, Severe, diagnosis.

Adjudicative Guideline I

The Individual has not produced any evidence contradicting the Psychologist's conclusion that he has NPD. While the Individual's counsel asked the Individual's coworker and former supervisor if they had noticed whether the Individual had displayed any of the DSM-5 criteria for NPD, neither of these witnesses were qualified to testify on this matter. Nor is the Individual's testimony that he does not meet the DSM-5 criteria worthy of any weight. Finally, the Individual notes that he had maintained an HRP certification from 2006 until 2019, during which time he had been under constant monitoring for psychological and mental health issues without the HRP having concluded that he had NPD. Without further development or evidence regarding the results of his HRP evaluations, this contention does not contradict the Psychologist's conclusion. Moreover, since the Individual testified that the HRP staff stopped monitoring him after his suspension in 2019, the HRP staff did not have access to most of the information that the Psychologist relied upon in reaching her conclusion. Without any information or testimony from the HRP staff, there is no evidence in the Record indicating that they would disagree with the Psychologist's conclusion. Therefore, the Individual has not shown that the Psychologist's finding that he meets the DSM-5 criteria for NPD is not accurate.

The Individual has not provided any evidence indicating that he has mitigated the security concerns raised by his NPD diagnosis, since he does not recognize that he has NPD and has not sought treatment for it.

The Individual has not shown that the derogatory information raised under Guideline I is not reliable, nor has he attempted to show that any of the mitigating conditions set forth at Adjudicative Guideline I at ¶ 29 are present. Accordingly, I find that the Individual has neither mitigated nor resolved the security concerns raised under Guideline I by his NPD diagnosis.

VI. 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 restoring 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 not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals