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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: February 2, 2022 ) Case No.: PSH-22-0051  
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Issued: August 23, 2022

**Administrative Judge Decision**

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for 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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. Derogatory information regarding the Individual’s personal conduct, alcohol use, and criminal activity was discovered. The Local Security Office (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 in order to resolve the substantial doubt regarding his eligibility to continue holding 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), the Individual presented the testimony of three witnesses. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 22 exhibits, marked as Exhibits 1 through 22 (hereinafter cited as “Ex.”). The Individual submitted 17 marked exhibits, marked as Ind. Exhibits A through D, and a number of unmarked exhibits which will be cited hereafter as “Unlabeled Ind. Exhibit”.

<sup>1</sup> Under the regulations, “‘Access 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.

## 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 a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E, G, and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. 710.7.

Guideline E states that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶15. Concerns that could raise a security concern include:

(a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) Deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

- (2) Any disruptive, violent, or other inappropriate behavior;
  - (3) A pattern of dishonesty or rule violations; and
  - (4) Evidence of significant misuse of Government or other employer's time or resources;
- (e) Personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:
- (1) Engaging in activities which, if known, could affect the person's personal, professional, or community standing;
  - (2) While in another country, engaging in any activity that is illegal in that country;
  - (3) While in another country, engaging in any activity that, while legal there, is illegal in the United States;
- (f) Violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and
- (g) Association with persons involved in criminal activity.

*Id.* at ¶16.

Guideline G states that 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. Conditions that could raise a security concern include:

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, 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;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) Diagnosis by a duly qualified medical or mental health professional (*e.g.*, physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) The failure to follow treatment advice once diagnosed;

(f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

(g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

*Id.* at ¶22.

Guideline J states that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and that, by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶30. Conditions that could raise a security concern include:

(a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

(b) Evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;

(c) Individual is currently on parole or probation;

(d) Violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program; and

(e) Discharge or dismissal from the Armed Forces for reasons less than "Honorable."

*Id.* at ¶31.

The LSO alleges that:

- In 2005, the Individual was cited for Minor In Possession of alcohol;
- In 2015, the Individual was arrested and charged with Aggravated Driving While Intoxicated (DWI) and had a Blood Alcohol Concentration (BAC) of .18 and .17, according to two tests;
- In April 2021, after admitting to consuming five beers prior to being pulled over, the Individual was refused to submit to a breathalyzer test and was arrested and charged with Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs and Open Container;
- In May 2021, the Individual was arrested and charged with Aggravated DWI and Leaving the Scene of an Accident;
- In August 2021, the Individual turned himself in for an outstanding warrant related to his April 2021 DWI arrest;

- In September 2021, a DOE-consultant Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder without adequate evidence of rehabilitation or reformation;
- In June 2021, the Individual failed to disclose his April 2021 DWI arrest during an intake assessment at a treatment center he was attending as a result of his May 2021 DWI, and the Individual did not disclose the arrest until three days later; and
- In July 2021, the Individual failed to disclose his 2015 DWI arrest during an alcohol assessment.

Ex. 2 at 1–2. Accordingly, the LSO’s security concerns under Guidelines E, G, and J are justified.

### 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 entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. FINDINGS OF FACT

The Individual’s group counselor (Counselor 1), a licensed clinical social worker, testified that the Individual completed a 16-week substance abuse recovery program in November 2021 that included trigger identification, coping skills, and mindfulness training. Tr. at 18–19, 21, 30. She testified that the Individual attended faithfully, internalized the information, and demonstrated that

he was using the skills he learned. *Id.* at 19, 21. She further testified that the Individual understood the consequences of his decision to drive after consuming alcohol. *Id.* at 22, 29. Counselor 1 had seen the Individual about 10 times because she did not lead every group therapy session. *Id.* at 28–29, 32. She testified that the Individual continued to attend the program after completing it in November 2021, attending as recently as two weeks prior to the hearing. *Id.* at 30.

The Individual’s individual counselor (Counselor 2) testified that he had held 12 sessions with the Individual to address relapse prevention, self-care, and positive wellbeing. Tr. at 37–38. During the Individual’s intake assessment, the Counselor’s clinic had diagnosed the Individual with Alcohol Use Disorder, Moderate, based on the Individual’s reporting of two previous DUIs. *Id.* at 39, 43–44. However, during the Individual’s treatment, Counselor 2 came to believe that the Individual did not have an alcohol use disorder, but was “just not responsible when it [came] to his drinking.” *Id.* at 43–44. He believed he had revised the Individual’s diagnosis to Alcohol Use Disorder, Mild. *Id.* at 50. Counselor 2 testified that when the Individual began counseling, he was not considered at high risk for consuming alcohol. *Id.* at 39. Counselor 2 had been aware of the Individual’s DUIs and that he had completed a 16-week substance abuse recovery program. *Id.* at 40. Counselor 2 also testified that the Individual attended a mood regulation group, which was intended to help attendees manage their emotions, but was not aware of how the Individual performed in that group because he did not run those groups. *Id.* at 38, 41. Counselor 2 testified that the Individual’s performance in individual therapy was satisfactory. *Id.* at 41. He further testified that he had “briefly discussed being a responsible thinker,” and in one session he had “mention[ed] accountability, taking responsibility.” *Id.* at 51. The Individual was still attending individual counseling sessions as of the hearing date. *Id.* at 42.

The Individual’s Alcoholics Anonymous (AA) sponsor testified that the Individual was active in the group, shared his story, and had identified himself as an alcoholic. Tr. at 56–57, 61. He testified that the Individual “went pretty quick through the steps,” and his list of people he had affected with his drinking (compiled for Step 4 and one of the few concrete assignments in the program) was not long or detailed. *Id.* at 58, 64–67. He had been the Individual’s sponsor for about 8 to 12 weeks in the spring of 2022, with his sponsorship concluding around the end of May or beginning of June. *Id.* at 57–58. The Individual had not had a different sponsor before him, but he believed the Individual had found a new sponsor after him. *Id.* at 58. The sponsor testified that the Individual had last consumed alcohol about a week before they met in the spring of 2022. *Id.* at 61. The sponsor testified that the Individual’s recent alcohol consumption was in conjunction with legal trouble and his AA attendance was court recommended. *Id.* at 63. When informed that the Individual’s most recent known legal trouble occurred in 2021, the sponsor confirmed that the recent alcohol consumption was, to his knowledge, about a week before they met in 2022 and that the Individual did not start attending AA until March 21, 2022. *Id.* at 68–71.

The Individual testified that he had received a citation for underage possession of alcohol when he was a minor and had pled no contest to a DWI charge in 2015. Tr. at 74–75. After his first DWI, the Individual continued consuming alcohol. *Id.* at 75. He did not attend treatment beyond the alcohol education classes required by the court. *Id.*

The Individual was charged with DWI again in April 2021. Tr. at 75. Initially, the Individual testified that he was pulled over on his way home from a fishing trip. *Id.* He later testified that he was on his way to his mother’s home when he decided to stop and go fishing for the first time in

his life. *Id.* at 75, 79, 82. When he was pulled over, he admitted to the officer that he had consumed six beers. *Id.* at 75–76. The Individual testified that he had only consumed five beers and had done so between noon and 5:00 PM on the day of his April DWI arrest. *Id.* at 76. After telling the officer he had consumed several beers, the Individual was asked to perform a field sobriety test, which he failed, and he was subsequently arrested. *Id.* The Individual refused to blow into a breathalyzer when asked to do so. *Id.* at 78. He testified that he had refused the test because he was struggling to hear the officer over traffic, a passing train, and the wind. *Id.* A nearly empty bottle of pineapple vodka was also found in the Individual’s vehicle that day. *Id.* at 77; Ex. 10 at 2. The Individual testified that he had not consumed any of the vodka and that he used it for cooking while camping. Tr. at 77–78. The Individual further testified that he had not felt impaired when he decided to drive that day, but after his treatment he knew he was definitely impaired when he drove. *Id.* at 77, 80. The Individual then testified that he believed, at the time, that he had passed the field sobriety test. *Id.* at 79. At the hearing, he still contested the police report, testifying that he was not speeding at the time he was pulled over. *Id.* After his arrest, the Individual was released with conditions that included a condition that he not consume alcohol. Ex. 10 at 9.

On May 27, 2021, the Individual was again arrested for DWI after hitting a motorcycle. Tr. at 81. He testified that he was not under the influence of alcohol when he drove that day. *Id.* at 85. He testified that he had not been allowed to go into work for several days after taking a COVID-19 vaccine. *Id.* at 85–86. He then testified that he called in sick to work that morning, May 27 at 7:30 AM. *Id.* at 86. The record of his call-in stated that he had experienced body aches and fatigue the day before that had resolved that morning. *Id.* The record further noted that the Individual had “denie[d] any fever, chills, cough, SOB,<sup>2</sup> DOE,<sup>3</sup> chest pain, nausea, loss of taste, smell, vomiting, diarrhea, or abdominal pain.” *Id.* The Individual testified that this description was correct at 7:30 AM, but that shortly afterward he began to feel much worse. *Id.* He testified that about two hours after making the call, he began experiencing diarrhea again.<sup>4</sup> *Id.* at 92. The Individual stated in his letter of interrogatory (LOI), that he was turning onto his block when he soiled himself and mistakenly pressed the accelerator instead of the brake. Ex. 11 at 10. He stated in the LOI that he hit a motorcycle when he used the accelerator. *Id.* In the LOI he stated that he continued down the block, stopped, and wiped himself with a face mask, then turned around and began driving back toward the motorcycle. *Id.* He stated in the LOI that an officer pulled him over in front of his home and told him someone had called and reported the hit and run. *Id.* The Individual testified that he refused to take a breathalyzer on May 27 because he knew he had taken medicine and consumed alcohol the night before and was attempting to hide it from the officers. Tr. at 121.

In his LOI, the Individual stated that he had not consumed alcohol before the DWI. Ex. 11 at 10. At the hearing, the Individual testified that he drank a six-pack of beer late at night on May 26, 2021, in an attempt to self-medicate, despite feeling sick. Tr. at 92, 98. The Individual also testified as to his pattern of drinking prior to his April 2021 DWI arrest. He testified that he would only drink when he was cooking. *Id.* at 79. He elaborated, testifying that he would use alcohol for cooking, then drink the remainder of the alcohol, resulting in his consuming several drinks while

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<sup>2</sup> Shortness of Breath.

<sup>3</sup> Dyspnea on exertion, defined as “the sensation of running out of the air and of not being able to breathe fast or deeply enough during physical activity.” Sharma, Hashmi, Badireddy, *Dyspnea on Exertion* (May 15, 2022), <https://www.ncbi.nlm.nih.gov/books/NBK499847/>.

<sup>4</sup> During the hearing, the Individual confirmed the accuracy of the call-in record which indicated that the Individual had only previously experienced fever and fatigue and that he had denied having diarrhea. Tr. at 86.

cooking. *Id.* The Individual later testified that his alcohol consumption had increased after his father died in 2019. *Id.* at 81. He testified that his father's death was a significant contributor to his problematic alcohol use in May 2021. He further testified that his counselors told him that "depression was there, it just didn't, you know, come together until that time frame [of the May 2021 DWI]." *Id.* The Individual testified that he last consumed alcohol on May 26, 2021. *Id.* at 98. He had an interlock device installed on his car for many months after the May DWI. *Id.* at 110.

The Individual was evaluated by the Psychologist on August 26, 2021. Ex. 15. at 2. The Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder and recommended weekly individual and twice-weekly group therapy for alcohol treatment for at least six months; bi-monthly blood tests for alcohol use in the prior 30 days (PEth test); and abstinence for a at least six months. *Id.* at 10–11. The Psychologist ordered a PEth test for the Individual, which had a negative result that indicated the Individual had not consumed alcohol in the preceding 30 days. The Psychologist added that in lieu of the therapy, the Individual could attend AA three times per week and work with an AA sponsor for at least six months. *Id.* The Individual completed a 16-week relapse prevention group program in November 2021. Ind. Ex. 11 at 1. He began attending individual and group counseling, as well as AA, in March 2022. Ind. Ex. 1; Ind. Ex. 2; Ind. Ex. 3; Ind. Ex. 9; Ind. Ex. 10. The Individual took PEth tests on April 22, 2022, May 26, 2022, and June 24, 2022, all of which had negative results showing that the Individual had not consumed alcohol in the 30 days preceding each test. Ind Ex. 4; Ind. Ex. 5; Unlabeled Ind. Exhibit, Labcorp Results, June 9, 2022.

The Psychologist described the Individual's lack of candor during her evaluations as "generalized," "across the board," and "serious." Tr. at 194. She testified that the Individual's lack of candor could have lead to an incorrect diagnosis or treatment. *Id.* at 194–95. The Psychologist testified that, if asked to modify her diagnosis after hearing the Individual's testimony, she would likely change the diagnosis to Alcohol Use Disorder, Moderate, in sustained remission. *Id.* at 196, 204–05. She testified that she believed the Individual to be rehabilitated and reformed and that she believed the Individual had a good prognosis. *Id.* at 203–04. She testified that she believed the Individual would be less likely to have a lack of candor if he faced potential situations with serious consequences. *Id.* at 207. She testified that, given the Individual's reported alcohol consumption before the May DWI,<sup>5</sup> he would have been unlikely to have difficulty driving that day. *Id.* at 208.

## V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable

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<sup>5</sup> The Psychologist used the amounts the Individual reported at the hearing to calculate his level of intoxication.



and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Guideline E concerns may be mitigated if:

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

Adjudicative Guidelines at ¶17.

Guideline G concerns may be mitigated if:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or

(d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶23.

Guideline J concerns may be mitigated if:

(a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) No reliable evidence to support that the individual committed the offense; and

(d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶32.

At the hearing, the Individual's testimony was often inconsistent; he gave varying accounts of the certain events and varying reasons for his actions. For example, in reciting the facts leading up to his April 2021 DWI, the Individual first said he was on his way home from a fishing trip when he was pulled over. He added that it was his first time ever fishing. He later testified that he was on his way to see his mother when he decided to go fishing. He did not explain why he apparently decided to go home after fishing instead of continuing on to his mother's home, nor why he decided to try his hand at fishing for the first time in the middle of the journey to his mother's home. Another example of the Individual's testimony being contradictory and incredible comes from his recitation of the facts leading up to his May 2021 DWI. The Individual's testimony about his physical condition on that day continues to shift with every retelling. It is difficult at best to draw a conclusion as to what symptoms, if any, the Individual experienced and why he would drive under such conditions. Similarly, the Individual insisted he was not intoxicated during the May DWI, but there is no evidence to support his statements because he refused to submit to alcohol testing with the stated intent of concealing his alcohol use, however small or distant that use may have been. Furthermore, the Individual testified that he was on his block when he experienced incontinence

and that he drove home, cleaned himself outside his home, then got back into his car and drove back to the scene of the accident, again, on the same block as his home. It is unclear why the Individual would use his car to return to the scene and why he would drive home to clean up but do so outside. It is difficult to harmonize all the facts to which the Individual testified under oath and, given his history of minimizing, omitting, and misstating facts to avoid the consequences of his actions, I cannot conclude that the Individual has stopped the behavior that caused the LSO to be concerned, much less mitigated those concerns.

The Individual presented evidence that he had over six months of abstinence from alcohol, as recommended by the Psychologist. He has also completed a treatment program and continues to engage in counseling and AA. However, the Individual's Guideline G concerns are inextricably intertwined with his Guideline E concerns, and the Individual's behavior is such that these efforts cannot, on their own, mitigate the LSO's concerns. Because the Individual's criminal conduct is blended with alcohol use, I cannot find that the Guideline J concerns are mitigated unless the Guideline G concerns are mitigated as well.

The Individual's reports of abstinence are supported by PEth testing that covers a period of four months, only three of them consecutive. Despite the Psychologist's opinion that the Individual is medically rehabilitated and reformed, I cannot find that the Individual's self-report of abstinence since his May DWI is credible because he has not mitigated the Guideline E concerns. It is unclear whether the Individual has relapsed, as indicated by his sponsor's testimony. I am also concerned by the Individual's failure to take significant steps toward recovery until nine months after his most recent DWI. He did not begin attending AA or his therapy and aftercare programs until March 2022, just over 3 months prior to the hearing. The Individual's sponsor testified that the Individual had worked the 12 Steps quickly and had not gone into significant detail or depth. I cannot give significant weight to his 2021 treatment because he did not fully disclose the extent of his alcohol history, which may have resulted in a different course of treatment. I am not convinced that the Individual has had sufficient time in his treatment programs to ensure that he has made changes which will be enduring.

The Individual's pattern of dangerous and unlawful alcohol-related behavior spans 17 years; his specific pattern of driving under the influence of alcohol spans six years. The Individual cannot demonstrate that he is no longer a security concern with only three consecutive months of documented abstinence. He has gone a year without a DWI before and then proceeded to drink and drive again years later.

The Guideline G and J concerns at issue are based on particularly egregious events. The Individual has been arrested for three DWIs, a striking and extreme number of DWIs for a single person over a lifetime, much less within a 10-year span. His risky behavior while under the influence of alcohol appears to have escalated over time. The Individual was cited for possessing alcohol as a minor. Next, he was arrested for his first DWI with a Blood Alcohol Concentration over twice the legal limit. Then, when pulled over for his second DWI, the Individual refused to comply with police instructions regarding alcohol testing. Shortly after that, the Individual was arrested for his third DWI after leaving the scene of an accident that he caused and in which another person was injured. With each incident the Individual demonstrated increasingly poor decision-making and increasingly risky behavior. While it is difficult to explicitly show that a pattern of risky and unlawful behavior has been broken, it is nevertheless imperative that the agency is able to trust the

Individual to behave appropriately in regard to a legal and widely available product such as alcohol. The Individual has not demonstrated that his judgment, in both the decision not to drink and the decision not to drive if he does choose to drink, has improved enough to warrant that trust.

The Individual has clearly taken positive steps to address his alcohol-related issues. However, doubts remain regarding his commitment to candor and honesty, his ability to sustain abstinence in the long term, and his ability to refrain from risky and unlawful alcohol-related behavior in the long term. Accordingly, I cannot find that the concerns under Guideline E, Guideline G, or Guideline J are mitigated.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guidelines E, G, and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals