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

In the Matter of: Personnel Security Hearing)	
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Filing Date: June 28, 2022)	Case No.: PSH-22-0108
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_____)	

Issued: October 13, 2022

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the clearance process, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which he signed and submitted on July 8, 2020. Exhibit (Ex.) 13 at 47. An Office of Personnel Management (OPM) investigator subsequently conducted an enhanced subject interview (ESI) of the Individual on July 20, 2020. Ex. 13 at 53. During that interview, the Individual was asked about two prior criminal charges he had faced: a September 2006 Assault Causes Bodily Injury, Family Member charge and a June 1992 Drunkenness, Public Intoxication charge. Ex. 13 at 54-55. It was revealed during the ESI that the Individual had been consuming alcohol prior to being arrested and charged with the aforementioned crimes. Ex. 13 at 54-55. Following the completion of the investigation, the Individual was granted his clearance.

On December 18, 2021, the Individual self-reported that he was arrested and charged with Driving While Intoxicated (DWI) on December 17, 2021. Ex. 9 at 1, 4.

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.

The Local Security Office (LSO) requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted on January 28, 2022. Ex. 10. As a result of the information provided, the LSO instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant Psychologist (DOE Psychologist).² Ex. 11. In forming her opinions, the DOE Psychologist relied on information she obtained in the clinical interview with the Individual, as well as her review of the Individual's Personnel Security File (PSF), and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). Ex. 11 at 3. The DOE Psychologist also reviewed clinical notes authored by an Occupational Health Services (OHS) Psychologist and spoke to a Licensed Professional Counselor (LPC), both of whom met with the Individual after the 2021 DWI charge³ Ex. 11 at 5. On March 24, 2022, the DOE Psychologist issued a Psychological Assessment (report) containing her opinions and recommendations, which included a diagnosis of Alcohol Use Disorder (AUD), Moderate, without adequate evidence of rehabilitation or reformation. Ex. 11.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. 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 J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of his wife and supervisor. *See* Transcript of Hearing, Case No. PSH-22-0108 (hereinafter cited as "Tr."). He also submitted three exhibits, marked as Exhibits A through C. The DOE Counsel submitted thirteen exhibits marked as Exhibits 1 through 13 and presented the testimony of the DOE Psychologist.

II. Notification Letter and Associated Concerns

A. Guideline G

Under Guideline G (Alcohol Consumption), "[e]xcessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those

² A Phosphatidylethanol (PEth) blood test was administered in conjunction with the psychological evaluation. Ex. 11. The PEth test was negative, indicating that the Individual had "not been drinking on a regular, heavy basis within a few weeks of the test, and [had] not had binge drinking episodes or moderate drinking within about one week of the test." Ex. 11 at 6. The DOE Psychologist opined that these results were consistent with the Individual's assertion that he had been abstinent from alcohol. Ex. 11 at 6.

³ The DOE Psychologist attached the OHS Psychologist's notes to her March 2022 report. Ex. 11.

conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-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 frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]” and “[d]iagnosis by a duly qualified medical or mental health professional...of alcohol use disorder[.]” *Id.* at ¶ 22(a) and (d). With respect to Guideline G, the LSO alleged that on March 11, 2022, a DOE Psychologist evaluated the Individual and, in a subsequent report dated March 24, 2022, determined pursuant to the DSM-5 that the Individual met the criteria for AUD and that he did not show adequate evidence of rehabilitation or reformation. Ex 1 at 1. The LSO further alleged that on December 17, 2021, the Individual was charged with DWI “after he consumed eight, 16-ounce” beers, resulting in a blood alcohol content (BAC) of 0.258%. Ex. 1 at 1. The LSO also alleged that the Individual was charged with Assault Causes Bodily Injury, Family Member in September 2006 after consuming alcohol, Public Intoxication in 1996, and Drunkenness, Public Intoxication in 1992. Ex. 1 at 1. These allegations justify the LSO’s invocation of Guideline G.

B. Guideline J

Under Guideline J (Criminal Conduct), “[c]riminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into questions a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is “[e]vidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” *Id.* at ¶ 31(b). Under Guideline J, the LSO alleged that the Individual was arrested and charged with alcohol-related offenses in 2021, 2006, 1996, and 1992. Ex. 1 at 2. These allegations justify the LSO’s invocation of Guideline J.

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 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 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 and Hearing Testimony

Regarding the matter of his 1992 alcohol-related charge and arrest, although the Individual could not recount how much alcohol he had consumed, the Individual revealed to the OPM investigator and the DOE Psychologist that he had consumed alcohol in a bar before “engag[ing] in a physical altercation[.]” that resulted in his arrest. Ex. 13 at 53; Ex. 11 at 4. The Individual was convicted of the crime and sentenced to pay a fine. The Individual told the OPM investigator that he “was young and immature and this was a [one-time] incident.” Ex. 13 at 54-55.

Although he had not disclosed the 1996 public intoxicated charge in the QNSP and was not confronted with it by the OPM investigator, the Individual subsequently disclosed the charge in his January 28, 2022, LOI. Ex. 10 at 4; Ex. 11 at 4. The Individual also stated in his LOI that he had no intention of driving under the influence or being involved in any alcohol-related incidents again. Ex. 10 at 4.

Regarding the aforementioned 2006 alcohol-related charge, that resulted in the “[p]rosecutor accept[ing] charge deferred[.]” the Individual admitted to the OPM investigator that he “had consumed a six pack of beer[.]” while attending an event with his wife and children.⁴ Ex. 13 at 55. The Individual told the investigator that he “asked his wife to leave the event” and law enforcement personnel were contacted when another event attendee felt the Individual was being “rude to his wife” after he “placed his arm around his wife[.]” Ex. 13 at 55; Ex. 11 at 4. The Individual denied harming his wife. Ex. 13 at 55. The Individual assured the OPM investigator that there was “no chance of recurrence” of such events, and that the incident “did not impact his personal or professional life.”⁵ Ex. 13 at 55. The Individual’s wife confirmed in her testimony that her husband had been consuming alcohol the day he was arrested in 2006 and that law enforcement was contacted when fellow event attendees heard the couple arguing. Tr. at 14-15.

As stated above, the Individual was arrested and charged with DWI on December 17, 2021, and his BAC registered at “0.258...grams of alcohol per 100 milliliters of blood.” Ex. 6 at 2; Ex. 9 at 1; Ex. 11 at 4. Prior to his arrest, the Individual had failed a field sobriety test, and law enforcement personnel observed that the Individual smelled of alcohol and exhibited slurred speech. Ex. 11 at 3-4. A notice of hearing was issued in the criminal matter and his “driver license was confiscated[.]”⁶ Ex. 8 at 3; Tr. at 18. As a term of his release, he was prohibited from consuming

⁴ The Individual stated in his January 28, 2022, LOI that he could not remember how much beer he had consumed on this occasion or the time frame in which the alcohol had been consumed. Ex. 10 at 4. The Individual stated the same with regard to the 1992 incident. Ex. 10 at 4.

⁵ The Individual stated in the January 28, 2022, LOI that he separated from his wife for a short time following that incident. Ex. 10 at 6.

⁶ The underlying criminal matter was resolved in late August 2022, resulting in probation. Ex. A. As a term of his probation, he is required to, among other things, abstain from alcohol, submit to testing, and attend an alcohol education course. Ex. A at 4-6; Tr. at 31. The Individual was also required to attend a DWI Impact Program, which

alcohol. Ex. 10 at 2; Tr. at 18. Regarding the precipitating incident in December 2021, the Individual indicated in the LOI and told the DOE Psychologist that he had been consuming beer while “working on a boat” at a friend’s home. Ex. 10 at 1; Ex. 11 at 3. He approximated that he drank eight 16-ounce beers over the span of approximately four hours. Ex. 10 at 1, 5-6; Ex. 11 at 3. The Individual’s wife testified that she knew the Individual intended to help his friend with his boat, that he had contacted her when he was stopped by law enforcement, and that she retrieved him from the detention center. Tr. at 15, 27. She testified that the Individual told her that he had lost count of how much alcohol he had consumed. Tr. at 27.

The Individual met with his employer’s OHS Psychologist on December 20, 2021, January 24, 2022, and February 28, 2022.⁷ Ex. 11 at 5, 19, 21, 23. The Individual told the OHS Psychologist that he “typically did not consume alcohol on a regular basis[,]” and that he currently “[does not] keep alcohol [in] his home,” which was also confirmed in his wife’s testimony. Ex. 11 at 19; Tr. at 17, 30. Although the Individual told the OHS Psychologist that he had consumed approximately six to eight beers on the day of the incident, he could not provide any insight as to why he purchased the beer, as he had not consumed any alcohol in the prior three to four months. Ex. 11 at 23; Tr. at 49. Pursuant to instruction from the OHS Psychologist, the Individual submitted to a PEth test on February 4, 2022, the result of which was negative. Ex. 7 at 3; Ex. 11 at 5.

The Individual also saw an LPC twice in March 2022 for the purpose of having an alcohol assessment conducted. Ex. 11 at 5; Tr. at 64. The DOE Psychologist’s report indicated that the LPC diagnosed the Individual with AUD, Moderate, and recommended that the Individual participate in an Intensive Outpatient Program (IOP). Ex. 11 at 5. The Individual’s wife testified that the LPC provided them with a list of four IOP providers, all of whom she contacted. Tr. at 20-21. She stated that the cost of attendance was prohibitively expensive.⁸ Tr. at 21. In her testimony, she confirmed that she has no knowledge of the Individual attending an IOP or otherwise seeking additional counseling or therapy for his alcohol use. Tr. at 22-23. The Individual also testified that the sessions with the LPC did not result in any further insight or understanding into his alcohol consumption. Tr. at 52.

The Individual told the DOE Psychologist that from his early 30s, beginning in approximately 1999, he would drink approximately “once or twice a month while socializing, ‘up to 6, 7, 8, beers a night.’” Ex. 11 at 4-5. He also went on to tell the DOE Psychologist that after the 2006 charge, he discontinued his monthly consumption of alcohol and only drank when his family went on vacation in the summer, limiting himself to “[four to five] beers on Friday and [two to three] on

he attended and completed on September 11, 2022. Ex. A; Ex. C. The Individual’s wife testified the DWI Impact Program “affected [the Individual] deeply.” Tr. at 25. A driver license suspension hearing was scheduled for early October. Ex. B.

⁷ The Individual held a Human Reliability Program (HRP) certification and was being evaluated by the OHS Psychologist in connection with the DWI charge. Ex. 11 at 5; Tr. at 60. The Individual’s HRP certification was subsequently revoked. Tr. at 61.

⁸ The Individual’s wife testified that she believes it was in April 2022 that the Individual contacted the LPC to tell him that he was not able to afford the IOP, at which point, the LPC told him that “[n]o further action [was] required[.]” Tr. at 21-22. She also testified that the LPC told the Individual he was exploring more affordable alternatives. Tr. at 21-22.

Saturday.” Ex. 11 at 5. Prior to the December 2021 incident, the Individual told the DOE Psychologist, he would drink approximately six beers total from the months of January to May, and from May to August, he could consume six beers one weekend then refrain from drinking for a month. Ex. 11 at 5. If the Individual and his family were at their favored vacation location, he would consume approximately three to four beers while there if it was warm outside.⁹ Ex. 11 at 5. The Individual’s wife confirmed that the couple would typically consume alcohol while on vacation during the summer holidays, but that the Individual refrained from doing so in 2022, despite the fact their guests were consuming alcohol. Tr. at 16.

The DOE Psychologist diagnosed the Individual with AUD and did not find adequate evidence of rehabilitation or reformation. Ex. 11 at 7; Tr. at 64. In formulating this opinion, the DOE Psychologist testified that she considered the Individual’s alcohol-related charges, the Individual’s BAC at the time of his most recent arrest, the variations in the Individual’s reported alcohol consumption, and her consultation with the LPC and OHS Psychologist. Tr. at 64-65. The DOE Psychologist recommended that in order to show adequate evidence of rehabilitation or reformation, the Individual should participate in and complete an IOP and attend the appropriate aftercare for twelve months. Ex. 11 at 7. If the Individual did not opt to participate in an IOP, then “he would need to attend [Alcoholics Anonymous (AA)] meetings three times per week, obtain a sponsor, and document his attendance and participation in the 12-steps[.]” Ex. 11 at 7. The Individual could also attend a program that is comparable to AA. Ex. 11 at 7. The DOE Psychologist also recommended that the Individual submit to at least six PEth tests during a twelve-month period. Ex. 11 at 7. In their testimony, both the Individual and his wife confirmed that the Individual had not attended any AA meetings. Tr. at 23. In her testimony, the Individual’s wife stated that the Individual did not attend AA meetings, as they felt that AA meetings would have likely been made mandatory upon the final disposition of the underlying DWI matter. Tr. at 23. Accordingly, the Individual and his wife felt that the Individual should wait. Tr. at 23. After hearing the testimony and reviewing all the evidence in the record, the DOE Psychologist testified that the Individual had not shown adequate evidence of rehabilitation or reformation. Tr. at 66.

The Individual stated in his LOI and in his testimony, and informed the DOE and OHS Psychologists that he has not consumed alcohol since December 17, 2021. Ex. 10 at 5; Ex. 11 at 5, 21. At the hearing, the Individual stated that he understands that he has “been in trouble with alcohol over the years,” but he does not feel this is indicative of the fact he has an issue with alcohol. Tr. at 46. Rather, he feels that he “made a mistake[.]” Tr. at 46. He testified that he “[does not] feel like [he has] an alcohol problem[.]” as he only drinks occasionally. Tr. at 46-49. He stated that the most recent DWI was an “isolated” incident, and it will not happen again. Tr. at 49. The Individual indicated that he has promised all parties that were negatively impacted by the DWI that he will not consume alcohol again, but he understands why others would be skeptical in light of his past alcohol-related offenses. Tr. at 49-50, 52, 57. In furtherance of his resolution to remain abstinent, the Individual stated that he has not purchased alcohol and has not spent much time

⁹ As the DOE Psychologist’s report notes, the Individual provided differing accounts of his alcohol consumption during the ESI and in the LOI. Ex. 11 at 4. The Individual stated in his LOI that he had only consumed alcohol “once or twice a year” in the prior five years. Ex. 10 at 5. He also stated that he would consume alcohol to intoxication “once or twice a year.” Ex. 10 at 6. The Individual stated during the ESI that from age 35 on, he would drink “one or two beers about every other weekend.” Ex. 13 at 55. He further stated that he only drank more than the aforementioned amount on the days of the 2006 and 1992 incidents. Ex. 13 at 55.

around alcohol, and although he was recently around other who did consume alcohol, he is not bothered when people consume alcohol around him. Tr. at 50-51, 57-58. He stated that he does not miss or need alcohol, and that he has not consumed any alcohol since December 17, 2021, pursuant to his decision to remain abstinent. Tr. at 51. The Individual also testified that he feels he can turn to his family to discuss his struggles with alcohol cravings, should they arise. Tr. at 52-53. The Individual stated that although he had never made any prior attempts to remain abstinent, as he never felt his alcohol consumption was problematic, he did stop frequenting the places where he drank and stopped participating in activities that would include alcohol consumption following the 2006 incident. Tr. at 53-54.

The Individual's wife testified that she never had any concerns over the Individual's alcohol consumption, and that she disagrees with the assessment that the Individual "has an alcohol problem[.]" Tr. at 14, 26, 30. Regarding his past criminal charges, she feels that the Individual "is law abiding." Tr. at 26, 30. The Individual's wife testified that the Individual usually consumes alcohol on six or seven occasions in a year, and that she had seen the Individual consume alcohol "[m]aybe twice[]" in 2021, once on July 4th and again on Labor Day. Tr. at 16, 30. She also stated that the Individual would drink to intoxication approximately once a year,¹⁰ and that she has no reason to believe he has consumed any alcohol since December 17, 2021. Tr. at 19, 32. She also feels that her husband will remain abstinent, as he has "learned a very valuable lesson[.]" Tr. at 32-33.

The Individual's supervisor confirmed in his testimony that he has never seen the Individual report to work in a hungover state or under the influence of alcohol. Tr. at 39. He stated that he has no knowledge of the Individual experiencing performance issues due to alcohol consumption, and further, he has never observed the Individual consume alcohol. Tr. at 39. However, the Individual has told him that "he has chosen to lead a life where alcohol is not going to be present." Tr. at 40. The Individual's supervisor testified that he believes the Individual is sincere and that he has no reason to believe the Individual has a problem with alcohol. Tr. at 40.

Both the Individual's wife and supervisor testified that they believe the Individual is reliable, trustworthy, and possesses good judgement. Tr. at 35, 43.

V. Analysis

A. Guideline G

As noted, Guideline G (Alcohol Consumption) provides that "[e]xcessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Conditions that could mitigate security concerns under Guideline G include:

- 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;

¹⁰ In later testimony, she indicated that the Individual would drink to intoxication approximately twice a year. Tr. at 30.

- 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).

Perhaps most concerning is the Individual's persistent belief that his relationship with alcohol was not problematic. He stated this belief multiple times during the hearing despite a history of alcohol-related charges and arrests reaching into the recent past and the fact that at least two mental health professionals diagnosed him with AUD. While I appreciate the fact that the testimony suggests that the Individual has been abstinent since December 17, 2021, I cannot conclude that he has mitigated the Guideline G concerns as stated in the SSC. Firstly, the Individual failed to implement the DOE Psychologist's recommendations. While the IOP was prohibitively expensive, the DOE Psychologist did indicate in her report that the Individual could attend AA meetings in lieu of the IOP, but the Individual also failed to join his local AA chapter, or a similar type of program, and participate with the assistance of a sponsor. Further, I have no evidence before me that indicates the Individual attended any counseling, therapy, treatment program, or aftercare – other than meeting with an LPC for the purpose of undergoing an alcohol assessment. It was for the foregoing reasons that the DOE Psychologist could not conclude at the hearing that the Individual had shown adequate evidence of rehabilitation or reformation, and it is for the foregoing reasons that I cannot conclude that the Individual has mitigated the stated Guideline G concerns pursuant to the mitigating factors at ¶ 23(b)-(d). As the Individual had not yet demonstrated twelve months of sobriety at the time of the hearing, I cannot conclude that enough time has passed, that the behavior was infrequent enough, or that the behavior took place under such unusual circumstances that it is unlikely to recur or does not cast doubt on the Individual's reliability, trustworthiness, or judgment. In fact, the Individual's reluctance to acknowledge his problematic relationship with alcohol and to seek treatment brings his character for good judgement directly into question. Accordingly, I cannot conclude that the Individual has mitigated the Guideline G concerns pursuant to the mitigating factor at ¶ 23(a).

B. Guideline J

The Adjudicative Guidelines provide that conditions that can mitigate security concerns under Guideline J include:

- 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(a)-(d).

As an initial matter, I have no evidence before me that the Individual was pressured or coerced into committing any of the criminal acts that were alleged in the SSC, and I have no evidence that the Individual did not commit any of the aforementioned acts. Accordingly, I cannot conclude that the Individual has mitigated the Guideline J concerns pursuant to the mitigating factors at ¶ 32(b) and (c).

The Individual asserted on multiple occasions that there is no danger or chance of alcohol-related offenses taking place again. He told the OPM investigator that he was immature during the 1992 incident and that it would not happen again. He asserted the same after discussing the 2006 incident with the OPM investigator, stating, as paraphrased by the OPM investigator, that “there [was] no chance of recurrence or future intent due to [the Individual] not wanting to hurt his family.” Ex. 13 at 55. These claims by the Individual that he will commit no further alcohol-related offenses were repeated in the LOI. Although the Individual recognized the harm that past alcohol-related offenses caused him and his family, and although he resolved not repeat these criminal acts, he still committed an alcohol-related offense in December 2021. This behavior has continued over the span of approximately two decades. Accordingly, I cannot conclude that the offenses took place under unusual circumstances or that enough time has elapsed to suggest that this sort of behavior is unlikely to recur pursuant to the mitigating factor at ¶ 32(a).

Although the record shows that the Individual entered a plea in the DWI matter and is on probation, I have no information before me indicating that the Individual has successfully completed probation. The Individual’s last alcohol-related charge was less than a year ago, and as such, I cannot conclude that enough time has passed without recurrence of such criminal activity. The record also does not contain any evidence of higher education, further job training, or constructive community involvement that would demonstrate successful rehabilitation. Although the Individual’s supervisor testified that the Individual was a good employee, the lack of any treatment to address his maladaptive alcohol use, which underpins the aforementioned criminal behavior, is a strong indication that the Individual has not been successfully rehabilitated. Accordingly, I cannot conclude that the Individual has mitigated the Guideline J concerns pursuant to the mitigating factor at ¶ 32(d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J of the Adjudicative Guidelines. After considering all the evidence, both 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 SSC. 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, I find 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.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals