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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: October 17, 2022) Case No.: PSH-23-0012
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Issued: February 21, 2023

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 be restored.

I. Background

In February 2017, the Individual had been arrested and charged with Aggravated Driving While Intoxicated (ADWI), Speeding, and Failure to Maintain Traffic Lane after being stopped by law enforcement personnel and submitting to field sobriety tests. Ex. 13 at 4, 6-8. A breath alcohol test (BAT) was conducted and registered at .16 g/210L blood alcohol content (BAC). *Id.* at 7. In May 2017, the Individual entered a plea agreement in the criminal matter. Ex. 12 at 2-3; Ex. 11 at 3-8; Ex. 17 at 31-32. In June 2017, the Individual was subject to a Personnel Security Interview (PSI) by the Local Security Office (LSO) so that more information regarding the incident could be obtained. Ex. 17.

In June 2020, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP), in which he provided information regarding the February 2017 incident. Ex. 18 at 40-41. As part of the investigation process, the Individual submitted to an Enhanced Subject Interview (ESI) with an investigator in July 2020. *Id.* at 58.

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.

In early April 2022, the Individual properly self-reported that he had been stopped by law enforcement personnel and subsequently charged with Aggravated Driving While Under the Influence of Liquor or Drugs (ADWI)² and Leaving the Scene of an Accident Involving Damage to a Vehicle. Ex. 10 at 1-4. Accordingly, the LSO instructed the Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted in April 2022. *Id.* at 8-9; Ex. 14. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in July 2022. Ex. 15. The DOE Psychologist relied on the information she obtained in a 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*. *Id.* at 2. The DOE Psychologist issued a report (the Report) containing her assessments and conclusions, which included a diagnosis of Alcohol Use Disorder (AUD), Moderate. *Id.* at 6.

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. *See* Transcript of Hearing, Case No. PSH-23-0012 (hereinafter cited as “Tr.”). He also submitted twelve exhibits, marked as Exhibits A through L. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted eighteen exhibits marked as Exhibits 1 through 18.

II. Notification Letter

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE raised security concerns Guidelines G and J of the Adjudicative Guidelines. Ex. 1.

A. Guideline G

Under Guideline G, “[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 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 . . . regardless of

² As this charge is similar to the charge Aggravating Driving While Intoxicated, the same acronym, ADWI, has also been used for this charge.

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). Regarding the Guideline G allegations, the LSO alleged that following a psychological evaluation conducted in July 2022, the DOE Psychologist issued a Report in the same month, in which she diagnosed the Individual with AUD, Moderate, and without adequate evidence of rehabilitation or reformation. Ex. 1 at 1. Further, in April 2022, the Individual was arrested and charged with ADWI and Leaving the Scene of an Accident after consuming approximately four beers, two shots of liquor, and registering at .18 g/210L BAC after a breathalyzer test was conducted. *Id.* The LSO also alleged that in February 2017, the Individual was arrested and charged with ADWI, speeding, and failure to maintain traffic lane after he consumed approximately six carafes of alcohol, four mixed alcohol beverages, and registered at .16 g/210L BAC when a breathalyzer test was administered. *Id.* Based on the foregoing, the LSO’s invocation of Guideline G is justified.

B. Guideline J

Under Guideline J, “[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 the aforementioned criminal offenses in February 2017 and April 2022. Ex. 1 at 1-2. Based on the foregoing, the LSO’s invocation of Guideline J is 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 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 their 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. *Id.* at § 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

As the Individual stated during the PSI, in the 2022 LOI, and in his testimony, he had been stopped by law enforcement in February 2017 for exceeding the posted speed limit. Ex. 17 at 13; Ex. 14 at 2; Ex. 13 at 6; Ex. 18 at 59; Tr. at 15. The Individual testified that he admitted to law enforcement personnel that he had been drinking alcohol and field sobriety tests were administered, which the Individual failed. Ex. 17 at 14-15; Ex. 14 at 2; Ex. 13 at 6-7; Tr. at 15. The Individual was arrested, and a BAT was performed, which registered at .16 g/210L BAC. Ex. 13 at 7-8. The Individual was charged with several misdemeanor offenses, including ADWI.³ Ex. 17 at 17. He stated during the PSI and confirmed in his testimony that on the night of the incident, he had consumed a “couple of carafes of [rice wine]”⁴ at a restaurant. *Id.* at 18-20, Tr. at 14-15. The Individual then stopped at two other locations and consumed two mixed alcoholic beverages at each location. Ex. 17 at 22-23, 26; Tr. at 15. He stated during the 2020 ESI that he “no longer drives after drinking alcohol.” Ex. 18 at 60.

In the 2020 QNSP, the Individual disclosed the fact that he received treatment for his problematic alcohol consumption from February 2017 to April 2017. Ex. 18 at 43-44. The treatment that the Individual received was pursuant to instructions he received from his employer’s Occupational Medicine (OM). *Id.* at 42-43, 60; Tr. at 16. He “was required to undergo a Fitness for Duty (FFD), which included random alcohol breath testing, an alcohol assessment, and attending sessions of” an alcohol awareness course/counseling with a Licensed Professional Clinical Counselor (LPCC). Ex. 15 at 3; Tr. at 16. The Individual completed all requirements, and no further treatment was recommended at that time. Ex. 15 at 3. The Individual testified that he was abstinent from alcohol throughout the FFD process. Tr. at 16-17.

The Individual stated in his testimony that during the 2017 to 2022 time period, he began consuming alcohol again, “but only once in a while[,]” and estimated that he remained abstinent for approximately “a year and some months.” Tr. at 17, 33-34. He testified that, when he did resume alcohol consumption, his consumption was limited to about “a couple of dinks per month.” *Id.* at 34. In the April 2022 LOI and during his testimony, the Individual stated that his alcohol consumption had reduced in the previous five years. Ex. 14 at 4; Tr. at 17, 36-37. The Individual also indicated in the LOI that he consumed “[s]cotch, dark beers . . . and whiskey.” Ex. 14 at 4. He stated that “[t]o this best of [his] knowledge[, his] pattern of alcohol consumption started . . . around 1995.” *Id.* He indicated that “[s]ince that time, the pattern has fluctuated from times of not drinking to having drinks at social functions.” *Id.* He also stated in the LOI that he last reached intoxication in late December 2021. *Id.* at 5. He told the investigator who conducted the 2020 ESI that he continued to consume alcohol socially, “up to [two] drinks of wine at home with dinner once to twice per week” and that this amount was consistent with his previous “pattern of alcohol

³ Pursuant to the plea agreement that was later entered in the criminal matter, the Individual was placed on probation and was ordered to attend drunk driving education classes, perform community service, attend a victim impact panel, have an ignition interlock device placed in his car, and to not “possess or consume alcohol or enter” an establishment that sells liquor. Ex. 17 at 33-37; Ex. 18 at 59-60; Ex. 14 at 3; Tr. at 15-17.

⁴ The Individual stated during the PSI that each carafe contained approximately six shot glasses of alcohol. Ex. 17 at 21.

use[.]” and he insisted that he made changes “in order to ensure [that] he does not use alcohol to [2017 incident] level[s] again[.]” Ex. 18 at 60. The investigator noted that the Individual did not seek treatment beyond that which was recommended by his employer’s OM, and he did not make “additional attempts to stop or reduce drinking.” *Id.* at 60. The Individual also told the investigator that he had not been “professionally diagnosed as abusing alcohol or alcohol dependent.” *Id.*

In his 2022 LOI, the Individual stated that on the night of the April 2022 incident, he had consumed approximately four beers⁵ and two shots of liquor over the span of approximately three-and-a-half hours. Ex. 14 at 1. Subsequently, while operating his motor vehicle, the Individual collided with the vehicle in front of him. *Id.*; Tr. at 18. The Individual stated in his LOI that instead of pulling to the side of the road at that time, he searched for a location with better lighting. *Id.* In his testimony, the Individual indicated that he had signaled to the other driver to pull to the side of the road. Tr. at 18. He proceeded to stop and wait for law enforcement personnel, and when they approached the Individual, he was observed putting something in his mouth. Ex. 10 at 5. Law enforcement personnel detected the odor of alcohol, the Individual disclosed that he had consumed alcohol, and he was asked to participate in field sobriety tests. Ex. 14 at 1; Ex. 10 at 4-6; Tr. at 18-19. A breathalyzer test was performed after the Individual had been placed under arrest, which registered at .18 g/210L BAC. Ex. 10 at 6. The Individual was criminally charged.⁶ *Id.* at 4. He was referred back to his employer’s OM and was placed on FFD in early April 2022. Ex. B; Tr. at 19-21.

The Individual told the DOE Psychologist and confirmed in his testimony that in May 2022, he began attending the Self-Management and Recovery Training (SMART) program once per week,⁷ as well as weekly one-on-one counseling with an LPCC. Ex. 15 at 4; Tr. at 20-22, 27; Ex. A. Through an examination of the therapy records provided to her by the LPCC, the DOE Psychologist learned that the LPCC had diagnosed the Individual with AUD. Ex. 15 at 4. He was referred to the program and one-on-one counseling through his employer’s OM. Tr. at 35-36.

In her review of the Individual’s PSF, the DOE Psychologist learned of the February 2017 and April 2022 incidents. Ex. 15 at 2-3. The Individual told the DOE Psychologist that he had “underestimated the amount of alcohol he had consumed [the] afternoon [of the 2022 incident].” *Id.* at 3. Although the Individual described his history of alcohol consumption and described a period of abstinence, the DOE Psychologist could not ascertain when the Individual began consuming alcohol again prior to the 2022 incident. *Id.* at 4. The Individual stated that he was a social drinker, indicating that he consumed alcohol “on weekends and not during the week, and only at social events.” *Id.* He informed the DOE Psychologist that he had been intoxicated on three occasions in the previous twelve months and that he last consumed alcohol about two-and-a-half months prior to the clinical examination. *Id.* When asked about his intention to drink in the future, the DOE Psychologist noted that the Individual “did not respond directly to the question.” *Id.*

⁵ In his testimony, the Individual approximated “four or five” beers and “two shots of whiskey.” Tr. at 19.

⁶ The criminal matter was ultimately dismissed without prejudice in August 2022. Ex. 8 at 1-2; Tr. at 19-20.

⁷ In a January 19, 2023, letter authored by the mental health counselor who leads the program, the Individual was described as “open and forthright about his plans to carry on with a plan for sober living,” and “an asset to [the] group[.]” Ex. C.

The Individual submitted to a Phosphatidylethanol (PEth) test in conjunction with the psychological evaluation, which “detects any significant alcohol use over the past three to four weeks.” *Id.* at 5. The results were “consistent with [the Individual’s] representation that he ha[d] not consumed alcohol in [the preceding two-and-a-half] months.” *Id.*

The DOE Psychologist diagnosed the Individual with AUD, Moderate,⁸ without adequate evidence of rehabilitation or reformation. Ex. 15 at 6; Tr. at 44. To show adequate evidence of rehabilitation or reformation, the DOE Psychologist recommended that the Individual continue attending the weekly SMART program, but that he increase his participation to a minimum of three times per week, and that he continue attending one one-on-one counseling meeting every week. Ex. 15 at 6. She also recommended that the Individual submit to monthly PEth tests. *Id.* The DOE Psychologist indicated that “[t]hese are steps which [the Individual] would need to implement over a [twelve-month] period which can be considered to have started in [June 2022].” *Id.* at 6-7.

At the time of the hearing, the Individual had attended approximately thirty-eight meetings of the SMART program, and he testified that his one-on-one therapy primarily focuses on his issues surrounding alcohol. Ex. G; Tr. at 23, 36; Ex. A. His LPCC indicated in a January 2023 letter that was submitted into the record that the Individual is “committed to change” and that the “therapeutic goals have been related to understanding alcohol use and abuse, triggers for overuse and” to “help [the Individual] maintain his sobriety throughout his life.” 15 at 4; Ex. A. She also stated that the Individual has “shown a deep commitment to remaining sober.” Ex. A. The Individual testified that after he received the DOE Psychologist’s Report, he began attending a twelve-week educational program through his employer’s Employee Assistance Program (EAP) in October 2022, which provided him with a place to “express and talk about . . . personal experiences[.]” Exs. B, C, D, and E; Tr. at 21-24, 27-28. Meetings occur once per week, and although the Individual testified that he continues to attend, he received a certificate of completion in January 2023. Ex. F; Tr. at 22-23. The Individual also testified that he began attending Alcoholics Anonymous (AA) meetings once per week and stated that he believes he began attending those meetings in November 2022. Tr. at 23-24; Ex. A. The Individual testified that he remains on FFD.⁹ *Id.* at 21.

Since being referred to FFD in 2022, the Individual has been subject to random alcohol breath tests and Ethyl Glucuronide (EtG) tests, both of which test for the presence of alcohol. Exs. I, J, and K; Tr. at 21. Since May 2022, the Individual has submitted to approximately twenty-five EtG tests, and he has submitted to twenty breath alcohol tests since July 2022. Exs. I, J, and K. All test results were negative. Tr. at 22; Exs. I, J, and K. The Individual has also submitted to four PEth tests since November 2022, all of which were negative. Exs. H and L. The Individual testified that he has since learned about “triggers, goals, certain . . . aspects . . . on how to deal with stuff[.]” Tr. at 28. He clarified in his testimony that his triggers include finding himself “in a social setting” like “going out to dinner[.]” *Id.* at 29. He has since learned that he does not need to consume alcohol

⁸ When making her diagnosis, because the Individual’s alcohol use history was difficult for the DOE Psychologist to understand, she took into consideration the fact that the LPCC had diagnosed the Individual with AUD. Ex. 14 at 5-6.

⁹ The lead psychologist of the employer’s OM stated in a January 2023 letter that the Individual “has been compliant with all aspects of [the] process, including the requirement that he abstain from alcohol.” Ex. B.

to enjoy himself in social situations and confirmed that he has been abstinent since April 24, 2022. *Id.* at 29-30, 39. He stated that “at this point in time [he has] like . . . no desire to . . . have an alcohol beverage[.]” and he has “trained [himself]” to consume a sparkling water “with lime[.]” *Id.* at 30, 38-39. In terms of long-term plans related to alcohol consumption, the Individual identified his health as a reason to continue his abstinence. *Id.* at 31. In his testimony, he voiced his intention to continue attending AA meetings as well as alcohol management and recovery program meetings. *Id.* at 31-33. He testified that he does not keep alcohol in his home, that he has a support system in his wife, coworkers, and family, and that he is on Step Two of the AA program and is looking to secure a sponsor. *Id.* at 37-38. The Individual testified that he believes there is a difference between the treatment he received in 2017 and the treatment he is currently receiving. *Id.* at 26-27. To illustrate his assertion, he noted that he is participating in one-on-one treatment, which he had failed to do in 2017, and stated that he believes that the EAP and SMART programs are more “in depth” in their coverage of educational material, as compared to the information presented to him by treatment programs in 2017. *Id.* at 26-27.

The DOE Psychologist testified that she “listen[ed] for details and specifics” regarding what the Individual indicated “ha[d] changed, what [he has] learned, how [he] handle[s] situations, where [he] used to drink[.]” and she found that the Individual “check[ed] all the boxes” with regard to the progress the he had made. *Tr.* at 45. She also found persuasive the negative tests and the positive letters from his LPCC and group leaders, which indicated that the Individual had made “excellent progress in his therapy.” *Id.* at 45-46. She testified that the Individual’s AUD was now in remission, and that he has shown adequate evidence of rehabilitation or reformation, despite the fact that he had not yet implemented her recommendations for a full twelve months. *Id.* at 47. The DOE Psychologist indicated that she did not believe “it would be any more persuasive for [her] to have those additional couple of months.” *Id.* She described his prognosis as “very good.” *Id.*

V. Analysis

A. Guideline G

The Adjudicative Guidelines provide that 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;
- (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.

I find that the Individual has mitigated the Guideline G concerns as stated in the SSC. As an initial matter, after the April 2022 incident, the Individual began addressing his maladaptive alcohol use, and upon being referred to his employer's OM, not only did he immediately join a weekly SMART program in compliance with his employer's recommendations, but he also took it upon himself to heed the recommendation that he seek one-on-one therapy. He has also endeavored to comply with the DOE Psychologist's recommendations. After receiving the Report, he enrolled in a twelve-week educational program through his employer's EAP. The Individual testified that he has remained abstinent since April 24, 2022, and the consistently negative results of EtG, PEth, and breath tests from the time he began the FFD program in 2022 support this claim. To assist his ongoing endeavor to remain abstinent, the Individual has joined AA, created a support system, and has learned how to cope with social situations that trigger his desire to consume alcohol. He testified that he intends to continue with the SMART program and AA and that he no longer keeps alcohol in his home. Through his therapeutic experiences, he has also come to understand that he does not need to use alcohol in social settings in order to enjoy the experience, reducing the possibility that the Individual may reengage in consuming alcohol socially. Importantly, after making note of the lifestyle changes the Individual made and having read through the letters submitted by the professionals who are assisting the Individual, the DOE Psychologist determined that the Individual had provided adequate evidence of rehabilitation and reformation at the time of the hearing and that his AUD was in remission. She also determined that the Individual's prognosis was "very good."

I must note, there are some facts in this case that by themselves might be cause for concern, but that viewed in light of all the circumstances do not dissuade me from finding that Individual has mitigated the Guideline G concerns. First, the Individual does have a history of treatment and relapse. Specifically, he previously received treatment in 2017 after an alcohol-related criminal charge, enjoyed a period of abstinence, only to again engage in alcohol-related criminal behavior in 2022 after resuming alcohol use. In addition, at the time of the hearing, the Individual had not yet implemented the DOE Psychologist's recommendations for a full twelve months.¹⁰

On balance, with the evidence and testimony before me, I do not believe these facts preclude the Individual from mitigating the stated Guideline G concerns. Importantly, in compliance with the

¹⁰ There is also some question, I should note, regarding how much the Individual had been drinking on average before the 2022 arrest. The Individual described himself as a social drinker in the period from 2017 to 2022, but this self-description is somewhat suspect in light of his heavy alcohol consumption on the day of the 2022 incident. Tr. at 34. However, since that incident, the Individual has since received one-on-one therapy focused primarily on his alcohol consumption and his long-term sobriety. Ex. A. Importantly, his therapy also focuses on "triggers for overuse[.]" Ex. A. Through ongoing therapeutic sessions, the Individual may understand such triggers. Additionally, there is ample objective proof in the form of various alcohol tests and dedicated participation in alcohol education and self-help programs, that the Individual has remained committed to his ongoing abstinence, as indicated in the letter submitted by the LPCC responsible for conducting the Individual's care. The Individual's efforts work to relieve concerns that the Individual is in danger of falling into the same pattern of alcohol consumption.

recommendations made by his employer's OM, which includes participation in the SMART program, the Individual is receiving one-on-one therapy that focuses primarily on his relationship with alcohol and his ongoing and long-term efforts to remain abstinent. This is an invaluable resource that he did not seek out and avail himself of in 2017. His one-on-one care allows the Individual to receive more personalized care and information from a professional. The Individual's LPCC also noted in her January 2023 letter that the Individual "has shown a deep commitment to remaining sober." His commitment to alleviating the concerns related to his alcohol consumption was also made evident by the fact that he endeavored to complete the DOE Psychologist's recommendations by participating in an additional program through his employer's EAP and joining an AA chapter, even though AA participation had not been recommended. The Individual remains beholden not only to himself, but also to his LPCC, fellow participants in the EAP and SMART programs, and fellow AA attendees. He has also found a strong support system in the aforementioned people, who can provide him with professional guidance and offer him the benefit of learning from their experiences. Further, as stated in his testimony, the Individual has noticed a marked difference in the quality of treatment he is receiving now as compared to that which he received in 2017, stating that he feels the educational material is more "in depth." Significantly, I also have the benefit of the DOE Psychologist's testimony and the knowledge that she concluded that the Individual had shown adequate evidence of rehabilitation and reformation despite the facts stated above. Regarding whether the Individual had implemented her recommendations for the requisite amount of time, she testified that the additional months would not be any more persuasive. I am similarly convinced. Accordingly, the Individual has mitigated the stated Guideline G concerns pursuant to the mitigating factor at ¶ 23(b).

B. Guideline J

The Adjudicative Guidelines provide that conditions that could 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.

As indicated above, the criminal conduct in which the Individual engaged was a direct result of his maladaptive alcohol consumption. Although the fact that the Individual engaged in this sort of

criminal conduct on two separate occasions within a five-year period is concerning, I nonetheless conclude that the Individual has mitigated the stated Guideline J concerns. While the last time this criminal conduct occurred was just one year ago, the Individual has since altered his lifestyle, eliminating the circumstances under which the criminal conduct occurred. Namely, the Individual has remained abstinent from alcohol, receives one-on-one therapy, attends group programs through his employer, engages in coping behaviors, and receives support from professionals and other trusted individuals. Further, as indicated above, the DOE Psychologist testified that the Individual has shown adequate evidence of rehabilitation and reformation and has a good prognosis. “Once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated.” *Personnel Security Decision*, OHA Case No. PSH-22-0085 at 8 (2022); *Personnel Security Decision*, OHA Case No. PSH-13-0062 at 7 (2013). Based on the foregoing, I conclude that the criminal conduct occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on the Individual’s reliability, trustworthiness, or good judgement.

C. 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 brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has 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 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