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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:	March 21, 2023)	Case No.: PSH-23-0067
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Issued: July 3, 2023

Administrative Judge Decision

Brenda B. Balzon, 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 a security clearance. On August 31, 2022, the Individual tested positive for alcohol on a random breath alcohol test (BAT) administered to him by his employer. Exhibit (Ex.) 6. As a result, the Local Security Office (LSO) instructed the Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted in October 2022. Ex. 7. Subsequently, the Individual underwent a psychological evaluation by a DOE consultant psychologist (DOE Psychologist) in November 2022. Ex. 8. After evaluating the Individual, the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, and she opined that the Individual's pattern of alcohol use is considered both habitual and binge consumption. *Id.* at 7.

The LSO informed the Individual, in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained

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.

that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted ten numbered exhibits (Exs. 1–10) into the record. The Individual submitted nine exhibits.² (Exs. A through I). The LSO presented the testimony of the DOE Psychologist at the hearing. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The Individual testified on his own behalf and presented the testimony of one character witness.

II. Notification Letter and Associated Security Concerns

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its concerns regarding the Individual’s eligibility for access authorization. Ex. 1. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. The SSC cited: the DOE Psychologist’s November 2022 determination that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5-TR) criteria for AUD, Moderate, without adequate evidence of rehabilitation or reformation; the Individual’s alleged pattern of habitual and binge consumption of alcohol; the Individual’s positive BAT result of 0.72 on August 31, 2022, and the Individual’s admission of alcohol consumption to intoxication on the evening of August 30, 2022. *Id.* The above allegations justify the LSO’s invocation of Guideline G.

The LSO also cited Guideline E (Personal Conduct) as a basis for its concerns regarding the Individual’s eligibility for access authorization. “Conduct 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. The SSC cited: the DOE Psychologist’s report stated that the Individual denied any alcohol consumption since his BAT on August 31, 2022, however, the result of the Individual’s Phosphatidylethanol (PEth) test that he underwent as part of his November 2022 psychological evaluation, was positive at a level of 126 ng/mL, which was congruent with significant alcohol consumption. *Id.* The SSC further cited the DOE Psychologist’s conclusion that the Individual attempted to lie by claiming he was abstinent while he was consuming alcohol regularly. *Id.* The above allegations justify the LSO’s invocation of Guideline E.

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

² The Individual’s exhibits were submitted after the hearing and consist of written evidence of a random BAT test on December 7, 2022 (Ex. A), and materials and assignments that the Individual completed from his grief counseling sessions (Exs. B through I).

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 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

On the morning of August 31, 2022, the Individual completed a random BAT as part of his employer's Human Reliability Program (HRP). Ex. 6 at 1, 3. His initial and confirmatory test results registered a BAC of .072. *Id.* at 3. In his October 10, 2022, LOI response, he stated that he consumed four beers on the evening of August 30, 2022, the evening before his BAT. Ex. 7 at 1. He reported that he became intoxicated, however, he asserted that he did not feel intoxicated on the night that he consumed alcohol, and denied feeling intoxicated when he arrived at work on August 31, 2022. *Id.* at 2, 4. He stated that he had consumed alcohol on that date because it was the one-year anniversary of his wife's passing away. *Id.* The Individual reported that due to his positive BAT, he was suspended from HRP, was placed on leave without pay for one week, and he was seen by a site psychologist that referred him to an off-site psychologist who recommended that he attend grief counseling. *Id.* at 2–3, 8.

In November 2022, the Individual underwent a psychological evaluation by a DOE consultant psychologist (DOE Psychologist) which included a clinical interview (CI). Ex. 8. During the (CI), he told the DOE Psychologist that he began consuming alcohol at age 19, and that prior to June 2022, he would drink approximately one to two alcoholic drinks per year on special occasions. *Id.* at 3, 5. He also stated that at one point he abstained from alcohol for several years. *Id.* at 3. He stated that in August 2021, his wife of 25 years died from complications related to COVID-19, and he described having a difficult time adjusting to the loss. *Id.* at 3. He reported that as the one-year anniversary of the loss of his wife was approaching, he experienced worsening depressive symptoms and in June 2022, he suddenly began consuming approximately six beers twice per week during weekends to the point of intoxication as a coping mechanism to “ease grief.” *Id.* at 3, 5. His explanation for his positive BAT was consistent with his LOI response. *Id.* at 4; Ex.7 at 1. Consistent with his LOI response, he also told the DOE Psychologist that this was an isolated incident, he has not consumed any alcohol since August 30, 2022, and he stated that he has no intention of consuming alcohol again. Ex. 8 at 4; Ex. 7 at 4, 6.

During the CI, the Individual reported that he was evaluated by an outside substance abuse professional (“SA evaluator”) at the recommendation of his employer in October 2022. *Id.* at 5. However, he stated that the SA evaluator determined that he did not meet the criteria for a substance abuse disorder and so did not recommend any substance abuse treatment. *Id.* The Individual further told the DOE Psychologist that the SA evaluator recommended he attend grief counseling, which he intends to do. *Id.* at 6. The Individual asserted that due to being in a romantic relationship, his mood is much improved and he indicated that he no longer needs alcohol to cope because he has a supportive girlfriend (hereinafter “then-girlfriend”) who does not drink alcohol. *Id.* at 5–6.

As part of the evaluation, the DOE Psychologist administered the Minnesota Multiphasic Personality Inventory-3 (hereinafter “MMPI”). *Id.* at 6, 20–28. The DOE Psychologist’s report (Report) stated that the Individual’s MMPI results showed evidence of defensiveness. *Id.* at 6. The Report also stated during the CI the Individual showed evidence of defensiveness in his brief responses and inability or unwillingness to explain discrepancies when confronted. *Id.* at 7. The Report further stated that although the evaluation did not include formal memory testing, the Individual showed no obvious memory defects during the mental status examination. *Id.* at 7.

Immediately following the CI on November 9, 2022, the DOE Psychologist ordered a PEth test, however, due to a “fatal flaw in the sample collection” by the lab, the DOE Psychologist had to re-order the PEth test for November 14, 2022. *Id.* at 4. The Individual’s PEth test returned a positive result of 126 ng/mL. *Id.* at 4, 13. The physician who interpreted the PEth results concluded that “a PEth at this level is congruent with significant alcohol consumption.” *Id.* at 16. The DOE Psychologist’s Report stated that the Individual’s PEth results are highly inconsistent with his report of being abstinent for over two months and his asserted intentions of not consuming alcohol again. *Id.* at 4. The DOE Psychologist also found it concerning that the Individual attempted to lie about his alcohol use while drinking regularly and claiming he was committed to ongoing abstinence, given the fact that he admitted that some of his family members expressed concerns about his alcohol use. *Id.* at 5.

In her Report, the DOE Psychologist concluded that the Individual met the diagnostic criteria for AUD, Moderate without adequate evidence of rehabilitation or reformation. *Id.* at 7. She also found that in the past five months prior to the evaluation, the Individual’s pattern of alcohol use “constituted a pattern of binge drinking in that he began consuming alcohol significantly more than was typical for him and to the point of intoxication multiple times per week.” *Id.* at 5. The DOE Psychologist recommended that to demonstrate rehabilitation or reformation, the Individual should abstain from alcohol for twelve months, participate in Alcoholics Anonymous (AA) at least once weekly or attend an alternative to AA such as SMART, or 12-step Facilitation Therapy, participate in alcohol testing to include at least two PEth tests over a 12-month period, and random breathalyzer tests. *Id.* at 7.

At the hearing, the Individual’s mother testified that she interacts with him weekly, either in-person or by phone. *Id.* at 14. She stated that the Individual told her about his positive BAT, and explained that it was because he was upset by the one-year anniversary of his wife’s death. *Id.* at 14, 20–22.

The mother testified that the Individual started attending grief counseling in approximately November or December 2022, he completed the program, and told her that it helped him. Tr. at 24–26. She explained that after his wife died, the Individual became overwhelmed by the many tasks he suddenly had to do simultaneously including managing his finances, his insurance, and his medications. *Id.* at 27. The mother testified that the grief counselor explained to him the different phases of grief, how to cope with depression, and how to deal with his problems without “try[ing] to hide behind a beer.” *Id.*

The mother also testified that after the Individual’s security clearance was suspended, she has observed positive changes in him. *Id.* at 13. She stated that prior to attending grief counseling, the Individual seemed depressed and was socially withdrawn. *Id.* at 17–18. However, since attending counseling, she observed that he has since returned to his religious faith, spends more time with her, interacts socially with his friends, and has resumed doing his regular recreational and social activities. *Id.* at 18–19. The mother observed he is happier, he has taken up new interests, and is managing his financial and household tasks successfully. *Id.* at 28. She testified that she has not seen the Individual consume alcohol since he told her about his positive alcohol test. *Id.* at 22.

The Individual testified regarding his history of alcohol use, and stated that after he got married he abstained from alcohol for 13 years, and then resumed alcohol consumption by drinking alcohol once per quarter until his wife passed away. *Id.* at 33–34. He testified that after his wife passed away, he became depressed and started consuming between six to twelve beers approximately five or six days per week, and admitted he drank to intoxication four or five times per week. *Id.* at 35–37. He admitted to consuming between six to nine beers on the night before his August 31, 2022, positive alcohol test. *Id.* at 39–40.

Under questioning by the DOE Counsel, the Individual initially testified that none of his friends or relatives have expressed to him that they were concerned about his alcohol use. *Id.* at 38. However, when the DOE Psychologist later questioned him, he changed his testimony by admitting that during the CI he told her that his daughter had expressed concern to him about his alcohol use and his depression. *Id.* at 65, 67. The Individual stated that in December 2022 through January 2023, he attended grief counseling, and he provided copies of his counseling materials and related assignments he completed. Tr. at 46; Exs. B–I. He testified that he did not discuss his alcohol use during grief counseling except to inform his grief counselor that he had tested positive on a BAT. Tr. at 46, 68. He stated that his grief counselor did not have any recommendations concerning his future use of alcohol. *Id.* at 46.

The Individual testified that after his positive BAT result in August 2022, he abstained from alcohol consumption until one occasion in November 2022, when he consumed alcohol with his girlfriend. *Id.* at 41–42. He stated they had a party together where he consumed approximately nine or 10 beers out of a 12-pack, and his then-girlfriend consumed a couple of beers. *Id.* at 42, 47. The Individual testified that although this incident occurred before his CI, he did not discuss this occasion of his alcohol consumption with the DOE Psychologist because she did not discuss his alcohol consumption with him and mainly focused on sending him to get blood work done, and had him take a questionnaire of 300 questions. *Id.* at 47–48. However, the Individual later testified that after he read the Report, he remembered that the focus of the CI was his alcohol use. *Id.* at 59.

The Individual asserted that he made truthful statements during the CI when he told the DOE Psychologist that he had not consumed any alcohol for the past two months despite the result of his positive PEth test. *Id.* at 62–63. He asserted that at the time of his November 9, 2022, CI, he had been abstinent for two months, and his first PEth was on the date of the CI. *Id.* at 62–63. However, he stated that he had to take a second PEth test a few days later because the lab had “messed up” his first PEth test sample. *Id.* at 48. He asserted that on November 11, 2023, two days after his CI, he consumed alcohol with his then-girlfriend at their party, which is the reason his second PEth test result was positive. *Id.* at 63. He stated that he had decided to consume alcohol because his then-girlfriend wanted to have a party and he thought it would be “all right” because he did not think he would get tested again. *Id.* at 64. He admitted that he previously told the DOE Psychologist during the CI that his then-girlfriend did not drink alcohol, however, he asserted that she had just started to drink alcohol a few days after the CI for “just one night.” *Id.* at 64. The Individual testified that in hindsight, he recognizes that consuming alcohol after the CI was “a stupid decision” because it made his PEth test result “high.” *Id.* at 65.

The Individual initially asserted during the hearing that the only time that he consumed alcohol after his CI until the hearing date was in November 2022. *Id.* at 43. However, he later testified that after his November 2022, CI, he has consumed alcohol to intoxication on approximately four or five occasions. *Id.* at 51–52. He further admitted that he last consumed alcohol on May 29, 2023, when he consumed “nine or ten beers, at least” on Memorial Day with a friend because they were “out having fun.” *Id.* at 52, 71–72.

The Individual testified that he read the Report and agreed with its description of his PEth test. *Id.* at 50. He testified that he has not yet participated in AA or a similar program, he has not sought PEth testing, and he has not been abstaining from alcohol although he asserted that since his last alcohol use on Memorial Day, he intends to abstain for the future. *Id.* at 51–54, 73. The Individual also asserted that he intends to join AA starting next Tuesday, he plans to get an AA sponsor, and intends to make an appointment with a psychiatrist. *Id.* at 54–55, 76. He testified that he took three random breathalyzer tests in the last six months from his employer and asserted that all his test results were negative. *Id.* at 53. He submitted a copy of a receipt indicating that he had a negative BAT test result on December 7, 2022. Ex. A. Regarding his intention to take future PEth tests, he stated he will “do anything he needs to” do. *Id.* at 53–54. The Individual testified that he believes he has an alcohol problem because he has made bad decisions when he consumes alcohol. *Id.* at 70. He stated that he had not previously sought professional help because he believed his grief counseling would be sufficient for him to maintain abstinence even though he admitted that he did not discuss his alcohol use with the grief counselor. *Id.* at 69.

After observing the hearing, the DOE Psychologist testified that in her Report, she diagnosed the Individual with AUD, Moderate, and concluded that he also met the definition of a pattern of binge drinking. Tr. at 89; *see* Ex. 8 at 5. She stated that as of the date of the hearing, the Individual still has the same diagnosis as stated in her Report. *Id.* at 99.

The DOE Psychologist restated the circumstances as described in her Report regarding why the Individual had to take two PEth tests.³ *Id.* at 85–86; Ex. 8 at 4. Regarding the Individual’s second PEth test on November 14, 2022, she stated that she could not speak confidently regarding the likelihood that a one-time binge consumption incident of nine or ten beers, as the Individual asserted, would cause a PEth result of 126 ng/mL. *Tr.* at 86–87. She explained that PEth test interpretation is outside of her purview as a psychologist, because a medical doctor interprets the lab results in her practice. *Id.* at 87. The DOE Psychologist testified that based on some of her past reports including interpretations from medical doctors, it is possible that this PEth level could be indicative of a one-time binge consumption of alcohol, however, she emphasized that she could not speak confidently to that conclusion. *Id.* at 87. She testified that the medical doctor’s interpretation of the Individual’s PEth results stated, “PEth levels between 20 [ng/mL] and 200 [ng/mL] are consistent with a level of drinking averaging between two to four drinks a day for several days a week in the month prior to the PEth test.” *Id.* at 88; *see* Ex. 8 at 16. The DOE Psychologist stated since the Individual’s PEth was on the upper end of that range, it indicated that the Individual had been consuming “more like an average three drinks a day for several days a week.” *Tr.* at 88.

The DOE Psychologist also testified regarding inconsistencies she observed from the Individual’s testimony concerning his alcohol-related behavior. *Id.* at 96–97. For example, she noted that based on his testimony of alcohol use, his pattern of alcohol use was significantly more frequent and in larger quantities than he had reported to her during the CI. *Id.* at 97. She also testified that during the CI, the Individual disclosed to her that his daughter had expressed to him that she had concerns about his alcohol use, however, at the hearing he denied that anyone had expressed concerns to him about his alcohol use. *Id.* at 81–82. The DOE Psychologist opined that this type of discrepancy is “most often . . . a defensiveness” whereby individuals do not acknowledge “unfavorable traits about themselves or behaviors in an attempt to present themselves more favorably and maybe avoid being judged . . . in a negative way.” *Id.* She opined that based partially on her clinical observations of his style of responding during the CI, the Individual has indications of defensiveness. *Id.* at 82. She explained that his CI was unusually shorter than the duration of the average CI, because the Individual’s responses to her questions were terse and very brief such that she had to ask him numerous times when she needed detailed information from him. *Id.* at 79–80. The DOE Psychologist also testified that the Individual’s MMPI results showed mild elevations on a measure of defensiveness. *Id.* at 82. She concluded that all those discrepancies suggest “intentional dishonesty when it comes to his behavior as it relates to alcohol.” *Id.* at 97.

The DOE Psychologist testified that the Individual’s MMPI results showed no apparent cognitive issues that would explain his discrepant testimony, and his responses and ability to report details to her during the CI gave no indications that he had difficulties with his memory. *Id.* at 83. The DOE Psychologist testified that despite those objective findings, she observed that when the Individual was asked why his testimony on certain topics was discrepant from her Report, he claimed he did not remember certain things. *Id.* Nevertheless, she noted that he was still able to remember specific details that occurred a while ago such as the number of test questions he answered on the MMPI and how many beers that he had previously consumed. *Id.* at 83–84. The

³ In her testimony, the DOE Psychologist explained that in the past when a lab has reported that a PEth sample is not viable, it has sometimes been because the correct label was not put on the test tube, or a seal was broken, and if it is not a viable sample, a new sample must be taken. *Tr.* at 86.

DOE Psychologist stated that the fact that the Individual remembers such details suggests to her that he does not have a cognitive issue that explains his discrepant testimony. *Id.* at 83–84.

The DOE Psychologist noted her positive observations from the hearing, specifically, that the Individual went to grief counseling, that he has a supportive mother, and his mother’s testimony indicated that he Individual’s mood has improved, and his ability to move through the loss of his wife has improved. *Id.* at 99. However, the DOE Psychologist also testified that because the Individual has not attended AA, has not submitted any PEth tests, and has not been abstinent, she saw no evidence that he has been following her recommendations. *Id.* at 96. As such, she concluded that his prognosis is “still poor” and is “pretty guarded.” and that the Individual has not shown adequate evidence of reformation or rehabilitation. *Id.* at 99–100.

V. Analysis

Guideline G

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.

The LSO’s allegations that the Individual tested positive on an August 2022 BAT, met the DSM-5-TR criteria for AUD, Moderate and has engaged in an alleged pattern of habitual and binge consumption of alcohol justify the LSO’s invocation of Guideline G. *Id.* at ¶ 22 (c)–(d). I find that the Individual has not mitigated the concern under the factors listed above.

I note that the Individual has undergone a significant loss in the passing of his wife, and asserted that his positive BAT was due to an isolated incident related to grieving over his loss. He also completed grief counseling, and his mother provided supporting testimony reflecting that his mood has improved and he has demonstrated an improved ability to process the loss of his wife.

However, the Individual's testimony that he has continued to drink to intoxication on several occasions including after his positive BAT, and again after his PEth test, leads me to conclude that the Individual's behavior did not occur under such unusual circumstances that it unlikely to recur. Moreover, given that he drank alcohol as recently as May 2023, I cannot conclude that the mere passage of time is sufficient to mitigate the security concerns. Thus, I find that the first mitigating condition under Guideline G is inapplicable. *Id.* at ¶ 23(a).

The Individual acknowledged that he has an alcohol problem, however, he has not yet become abstinent from alcohol, has not obtained PEth tests, and has not begun or completed any recommended treatment to address his AUD. While he attended grief counseling, his counseling did not address his alcohol consumption, and he admitted that he was mistaken when he thought that grief counseling was sufficient treatment for him to maintain abstinence. Accordingly, I find that the second mitigating factor under Guideline G does not apply. *Id.* at ¶ 23(b).

I further find that the third and fourth mitigating conditions under Guideline E are inapplicable. *Id.* at ¶ 23(c)–(d). While the Individual expressed an intent to participate in AA and contact a psychiatrist, he has not yet enrolled in any treatment or counseling program.

For the reasons stated above, I cannot find that the Individual has mitigated the security concerns raised by the LSO under Guideline G.

A. Guideline E

Conditions that could mitigate security concerns under Guideline J include:

- (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.

The LSO's allegations that the Individual deliberately provided false information to the DOE Psychologist concerning his alcohol consumption justify the LSO's invocation of Guideline E. *Id.* at ¶ 16 (b). I find that the Individual has not mitigated the concern under the factors listed above.

As an initial matter, the Individual asserted that he told the truth to the DOE Psychologist during the CI regarding his claims of abstinence from the period after his August 2022 BAT until his PEth test. He stated that since he did not consume alcohol with his then-girlfriend until two days after his November 9, 2022, CI, he did not intentionally provide false information to the DOE Psychologist. However, I find the Individual's claim of abstinence not credible because his statements are logically inconsistent with the fact that he also testified that his binge-drinking incident with his then-girlfriend occurred *before* the CI, and that he chose not to disclose his alcohol consumption during the CI because the DOE Psychologist did not discuss his alcohol use during the evaluation. The Individual also asserted that his second PEth test result of 126 ng/mL was due to a one-time binge consumption of alcohol. However, he presented no medical evidence to support his assertions. This lack of evidence is also significant because while the DOE Psychologist indicated it could be possible, she could not speak confidently regarding the Individual's assertions because a medical doctor is needed to interpret PEth laboratory results. Accordingly, on balance, I find that the evidence supports the medical doctor's interpretation of the Individual's PEth result of significant alcohol consumption on a weekly basis in the month prior to the PEth test. Therefore, I conclude that the Individual misrepresented his alcohol consumption to the DOE Psychologist. I turn next to whether any of the mitigating factors apply.

I find that the first mitigating factor under Guideline E is inapplicable. *Id.* at ¶ 17(a). The record does not show that the Individual made prompt, good-faith efforts to correct his misrepresentations before being confronted with the facts. At the hearing, he maintained that he made truthful statements about his alcohol consumption during the CI, even after being confronted with results of his PEth test that indicate otherwise. Further, while he eventually acknowledged that he had consumed alcohol prior to his positive PEth result, he did not do so until the hearing date, and even then, his admission of alcohol use did not seem in good-faith. Rather, he attempted to excuse his behavior by implausibly claiming that his omission during the CI was because the DOE Psychologist did not ask him about his alcohol use during the CI.

The second mitigating condition under Guideline E is inapplicable because the Individual did not assert that any of his misrepresentations were made on the advice of counsel. *Id.* at ¶ 17(b).

The third mitigating condition under Guideline E is inapplicable because the Individual's misrepresentations were not minor and the record contains several unresolved inconsistencies which continue to cast doubt on his reliability, trustworthiness, and judgment. For example, the Individual initially testified that his only alcohol consumption after his August 2022 BAT until the hearing was in November 2022. However, he later admitted that he had consumed alcohol to intoxication on multiple occasions since then, including his most recent alcohol use that occurred less than one month prior to the hearing. Further, the Individual's testimony regarding his pattern of alcohol use was significantly more frequent and in larger quantities than he had reported to her during the CI.⁴ Likewise, he testified that no family members had expressed concerns about his alcohol use, which was in contrast to what he disclosed to the DOE Psychologist during the CI regarding his daughter's concerns. Moreover, as explained by the DOE Psychologist, the evidence of record suggests to her that the Individual does not have a cognitive issue that explains the discrepancies in his testimony. These unresolved discrepancies raise serious ongoing concerns about the Individual's reliability and trustworthiness, and I cannot find that his behavior is unlikely to recur. *Id.* at ¶ 17(c).

The fourth mitigating condition is inapplicable because Individual does not fully acknowledge his untruthfulness regarding his alcohol use and has not taken positive steps to alleviate the factors which led to his untruthfulness. *Id.* at ¶ 17(d). His intentional dishonesty regarding his alcohol use at the very least reflects a defensiveness, as opined to by the DOE Psychologist, and while the Individual might have an intention to remain abstinent, he has not yet pursued the DOE Psychologist's recommendations that would not only address his AUD, but would also alleviate the factors that contributed to his lack of candor about his alcohol use.

The fifth mitigating condition is inapplicable because the LSO did not allege that the Individual had engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition does not apply because as discussed above, the Individual has not presented evidence that his PEth test result was from a source of questionable reliability. *Id.* at ¶ 17(f). The final mitigating condition is inapplicable because the Guideline E concerns do not revolve around association with persons involved in criminal activities. *Id.* at ¶ 17(g).

For the reasons stated above, I cannot find that the Individual has mitigated the security concerns raised by the LSO under Guideline E.

VI. Conclusion

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E and G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored.

⁴ As stated above, during the CI and in his LOI response, the Individual reported he had consumed four beers on the night prior to his positive BAT, however, at the hearing, he testified he had consumed approximately six to nine beers on that date. Ex.7 at 1; Ex. 8 at 4; Tr. at 40.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals