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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: April 20, 2023)	Case No.: PSH-23-0076
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_____)	

Issued: June 30, 2023

Administrative Judge Decision

Phillip Harmonick, 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

The Individual was first granted a DOE security clearance in 1999. Exhibit (Ex.) 13 at 141.² The Individual completed Questionnaires for National Security Positions (QNSPs) in connection with the initial investigation of his eligibility for access authorization and periodic reinvestigations of his continued eligibility for access authorization through which he disclosed that he pleaded guilty to Driving Under the Influence of Alcohol (DUI) in 1986 and was cited for Open Container of Intoxicants on Street in 1988, Open Intoxicants in Moving Vehicle in March 2013, and Illegal Transportation of Alcohol as a Passenger in August 2013. *See id.* at 133–40 (providing this information in a 2015 QNSP).

On May 18, 2018, the Individual was arrested and charged with Operating a Vehicle While Under the Influence (OWI) and Possession of THC. Ex. 12 at 2; Ex. 13 at 49. A court ordered the

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.

² The internal pagination of numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, Ex. 13 is a compilation of multiple records and is not consecutively paginated. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

Individual to undergo an alcohol evaluation through which he was diagnosed with Alcohol Use Disorder (AUD), Mild. Ex. 13 at 74–75. The Individual did not report his arrest to DOE until January 4, 2021, when he signed and submitted a QNSP (2021 QNSP) in connection with periodic reinvestigation of his eligibility for access authorization. *Id.* at 52, 59; Ex. 14 at 6. The Individual disclosed his 2018 DUI on the 2021 QNSP, but omitted the charge for possession of THC and checked boxes marked “no” on the 2021 QNSP in response to questions concerning whether he had purchased or used illegal drugs in the prior seven years. Ex. 13 at 49–51.

On October 9, 2021, the Individual was arrested and charged with DUI. Ex. 12 at 3. On November 2, 2021, the local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his 2018 arrest. Ex. 14 at 1–2. In his response, the Individual provided information related to the 2018 arrest but did not disclose his October 2021 arrest. *Id.* at 3–7. The Individual also indicated that he was a “very occasional user” of marijuana prior to his 2018 arrest. *Id.* at 5.

At the request of the LSO, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation on May 31, 2022. Ex. 15 at 1. The DOE Psychologist subsequently issued a report of the psychological evaluation (Report) in which she opined that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Moderate, in early remission, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 3.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 4 at 1–2. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E, Guideline G, Guideline H, and Guideline J of the Adjudicative Guidelines. *Id.* at 4–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 6. 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 hearing. The LSO submitted seventeen exhibits (Exs. 1–17). The Individual did not submit any exhibits. The Individual testified on his own behalf. Hearing Transcript (Tr.) at 3, 12. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 48.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 4–5. “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 Individual’s failure to promptly disclose his 2018 OWI and failure to disclose having been arrested and charged with Possession of THC in 2018 and DUI in 2021. Ex. 1. The LSO’s allegations that the Individual deliberately

omitted or concealed having been arrested and charged with criminal offenses justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the second basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 5–6. “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 Individual’s numerous alcohol-related citations and charges and his diagnosis with AUD via the court-ordered alcohol evaluation and the DOE Psychologist. Ex. 4 at 5–6. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work and was diagnosed with AUD by a duly qualified mental health professional justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

The LSO cited Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines as the third basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 6. “The illegal use of controlled substances . . . can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 24. The SSC cited the Individual having been arrested and charged with THC possession in 2018 and having admitted to possessing and using marijuana in his response to the LOI. Ex. 4 at 6. The LSO’s allegations that the Individual illegally possessed and used marijuana, including while having been granted access authorization, justify its invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (c), (f).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 6. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual’s history of alcohol-related charges and citations.³ Ex. 4 at 6. The Individual’s pattern of alcohol-related citations and charges justifies the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep’t 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

³ The LSO did not cite to the Individual’s marijuana use or 2018 charge with THC possession as raising security concerns under Guideline J. Ex. 4 at 6.

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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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

The Individual was arrested and charged with DUI in 1986, and was sentenced to a one-year term of probation and two hundred hours of community service for the offense. Ex. 13 at 136–37. In 1988, the Individual was cited for carrying an open container of alcohol on a street and ordered to pay a fine. *Id.* at 137–38. The Individual was first granted access authorization in 1999. *Id.* at 141.

In March 2013, the Individual was cited for Open Intoxicants in Vehicle after a law enforcement officer observed an open beer in the Individual’s vehicle during a traffic stop. *Id.* at 133–34, 140. The Individual was cited for Illegal Transportation of Alcohol as a Passenger in October 2013 after a law enforcement officer stopped the Individual’s girlfriend for speeding and observed the Individual with an open beer. *Id.*

On May 18, 2018, the Individual was arrested and charged with OWI and Possession of THC. Ex. 12 at 2; Ex. 13 at 49. The Individual did not disclose his arrest to the LSO because he was “afraid for [his] job and future career path” Ex. 14 at 6. The Individual pleaded no contest to OWI, and the Possession of THC charge was dropped by the prosecuting agency. Ex. 12 at 2; Ex. 13 at 49–50; Ex. 14 at 3. A court sentenced the Individual to pay a fine, required him to undergo an alcohol evaluation and counseling, and suspended his driver’s license for six months. Ex. 13 at 50, 74–75; Ex. 14 at 3.

The Individual participated in the court-ordered alcohol evaluation on April 14, 2019. Ex. 13 at 74. The clinician who performed the evaluation diagnosed the Individual with AUD, Mild. *Id.* The Individual participated in four group counseling sessions and one individual counseling session over three weeks, after which he was discharged from the court-ordered counseling with a good prognosis. *Id.* at 75.

On January 4, 2021, the Individual submitted the 2021 QNSP and certified that its contents were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* at 59. The Individual disclosed his 2018 arrest for OWI on the 2021 QNSP. *Id.* at 52. However, he did not disclose his arrest for Possession of THC, and checked boxes marked “no” in response to questions on the 2021 QNSP concerning whether he had illegally used or purchased drugs in the seven years prior to completing the 2021 QNSP or while possessing a security clearance. *Id.* at 50–51; *see also* Tr. at 35 (reflecting the Individual’s testimony at the hearing that

he did not disclose his arrest for Possession of THC on the QNSP because he “didn’t think it’d show up” during the background investigation due to the drug-related charges having been dropped in connection with his plea agreement).

On January 18, 2021, the Individual met with an investigator (Investigator) for an interview concerning his eligibility for access authorization. Ex. 13 at 65. The Individual represented to the Investigator that he had “learned his lesson” and that he had “no [] intent[ion] to drive under the influence again.” *Id.* at 67. The Individual did not disclose that he was arrested and charged with Possession of THC to the Investigator. *Id.* at 68.

On October 9, 2021, the Individual was arrested and charged with DUI. Ex. 12 at 2. The Individual pleaded guilty to reckless driving and was sentenced to probation until August 2023, pursuant to which he was ordered to attend court-ordered alcohol counseling, pay a fine, wear an ankle monitor that could detect traces of alcohol consumption through his sweat, and participate in Alcoholics Anonymous (AA) meetings. *Id.* at 34, 40–41, 43–44.

DOE subsequently received information revealing the Individual’s May 2018 arrest and charge for Possession of THC. *See* Ex. 14 at 5 (indicating that DOE received the information from a source other than the Individual). On November 2, 2021, the LSO issued the Individual the LOI concerning his use of alcohol and marijuana and his substance-related arrests and citations. *Id.* at 2. In his response to the LOI, the Individual represented that he had been a “very occasional user” of marijuana prior to his 2018 arrest but had not used any marijuana since the arrest. *Id.* at 5. The Individual admitted that he had intentionally failed to disclose his 2018 arrest as required because he was “scared” of how it would affect his career. *Id.* at 6. The Individual represented that he “acknowledge[d] this mistake and [would] not do it again.” *Id.* The Individual did not report his October 9, 2021, arrest and DUI charge in his response to the LOI. *Id.* at 3–7.

On May 31, 2022, the Individual met with the DOE Psychologist for a psychological evaluation. Ex. 15 at 1. The DOE Psychologist conducted a clinical interview of the Individual and administered seven psychological tests. *Id.* Following the clinical interview, the DOE Psychologist issued her Report in which she concluded that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Moderate, in early remission, under the *DSM-5*. *Id.* at 3. The DOE Psychologist recommended that the Individual permanently abstain from alcohol and participate in group or individual therapy with a counselor with appropriate certifications in drug and alcohol treatment for three years. *Id.* at 4.

The Individual completed the alcohol counseling required under the terms of his probation in May 2022. Tr. at 41. The ankle monitor the Individual was required to wear under the terms of his probation was removed in February 2023. *Id.* at 44. The Individual resumed alcohol consumption after the ankle monitor was removed and last consumed alcohol the weekend prior to the hearing when he had “a couple beers.” *Id.* at 18.

The Individual testified at the hearing that he wants to abstain from alcohol. *Id.* at 21. The Individual claimed that he attends AA meetings on a weekly basis but does not have an AA sponsor. *Id.* at 20. The Individual initially denied having used illegal drugs while possessing a security clearance before recanting that testimony, and testified that he had not used marijuana

since 2018.⁴ *Id.* at 36, 39. The Individual testified that he does not intend to use any illegal drugs in the future. *Id.* at 36. The Individual represented that he is a highly skilled employee and that failing to reinstate his access authorization would harm DOE's ability to carry out its mission in his work area. *Id.* at 14–15.

The DOE Psychologist testified that she was more confident in her diagnosis following the hearing than she had been when she issued the Report based on the Individual's continued alcohol consumption despite his stated desire to stop doing so. *Id.* at 52. The DOE Psychologist indicated that the Individual's AUD was no longer in remission because of his recent alcohol consumption, and that his AUD continued to impair his judgment and reliability. *Id.* at 52, 55.

V. ANALYSIS

A. Guideline E

Conditions that could mitigate security concerns under Guideline E 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

⁴ When asked if he had ever used marijuana while possessing a security clearance the Individual said "no" despite having possessed a security clearance continuously from 1999 until its suspension in connection with this proceeding. Tr. at 36. When asked to confirm that response he testified "that's a hard question to ask. Have I ever? Probably, yes." *Id.* In response to questions concerning when he last used marijuana, the Individual testified as follows: "It's been a long time . . . I did it in college. And probably -- eight, nine years ago . . . [W]ell, no. Probably more like six years ago [in 2017] . . . 2017, 2018. I don't -- I don't do it anymore." *Id.* at 38–39.

reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The Individual's 2018 arrest for THC possession and 2021 arrest for DUI were discovered via investigations into his eligibility for access authorization, and the Individual was confronted with this information before he admitted to the arrests. Moreover, the Individual did not promptly disclose his 2018 arrest for OWI and admitted that he only disclosed the arrest on the 2021 QNSP because he knew that the information would be revealed during the periodic reinvestigation of his eligibility for access authorization. Accordingly, the first mitigating condition is inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition is inapplicable because the Individual did not assert that he relied on the advice of another person when he failed to disclose his arrests as required by DOE. *Id.* at ¶ 17(b).

The Individual repeatedly failed to disclose information material to his eligibility for access authorization as required by DOE and indicated that he did so intentionally to avoid negatively impacting his career. Notably, the Individual failed to disclose his October 2021 arrest and DUI charge on his response to the LOI wherein he acknowledged his previous failure to disclose arrests and committed not to withhold such information again. In light of the Individual's repeated dishonesty and flagrant disregard for his obligations to report derogatory information to DOE, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

There is no indication that the Individual's dishonesty was attributable to his AUD or some other condition that might be addressed through counseling. Moreover, considering the Individual's pattern of concealing derogatory information from DOE, even after committing not to do so, I find it likely that the Individual's conduct would recur if he perceived that disclosing derogatory information would negatively affect him. Thus, the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d).

The fifth mitigating condition is inapplicable because the LSO did not recite information in the SSC indicating that the Individual's conduct created a special vulnerability to exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the LSO's allegations did not rely on unsubstantiated information or information from sources of questionable reliability. *Id.* at ¶ 17(f). The LSO did not allege that the Individual associated with persons engaged in criminal conduct, and thus the seventh mitigating condition is inapplicable. *Id.* at ¶ 17(g).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline E are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

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

Id. at ¶ 23.

The Individual has been arrested or cited for alcohol-related offenses on six occasions over several decades. The Individual has avoided alcohol-related offenses for years at a time only to later reoffend. In light of this pattern of behavior, the passage of approximately twenty months since the Individual's arrest for DUI in October 2021 is insufficient for me to conclude that the passage of time alone has mitigated the security concerns presented by the Individual's alcohol-related offenses under Guideline G. Moreover, the weekend prior to the hearing, the Individual consumed alcohol against treatment recommendations and his own stated intention to abstain from alcohol. The DOE Psychologist opined that the Individual's AUD is no longer in remission in light of his relapse and that the Individual's AUD likely impairs his judgment and reliability. For these reasons, I find that the circumstances giving rise to the security concerns are ongoing and likely to recur in the future. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual did not enroll in alcohol-related therapy as recommended by the DOE Psychologist and consumed alcohol against treatment recommendations less than one week prior to the hearing. Accordingly, the second mitigating condition is inapplicable. *Id.* at ¶ 23(b). The third mitigating condition is inapplicable because the Individual is not currently enrolled in alcohol-related counseling and has relapsed multiple times after participating in alcohol-related counseling. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable as the Individual has not participated in the treatment recommended by the DOE Psychologist or complied with the DOE Psychologist's recommendation to abstain from alcohol consumption. *Id.* at ¶ 23(d).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline G are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

C. Guideline H

Conditions that may mitigate security concerns under Guideline H include:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Id. at ¶ 26.

In light of the Individual's attempts to conceal his illegal drug use in connection with the adjudication of his eligibility for access authorization, I find that his credibility in reporting his illegal drug use is minimal. The Individual's initial testimony at the hearing that he had not used marijuana while possessing a security clearance, despite having been arrested for marijuana possession while possessing a security clearance, and equivocal account of the last occasion on which he used marijuana further undermine his credibility to accurately report on his illegal drug use. In the absence of drug testing results or other evidence that could corroborate the Individual's claims to have abstained from marijuana use since 2018, I cannot find that the Individual's marijuana use occurred so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on his reliability, trustworthiness, or judgment. Therefore, I find that the Individual has not brought forth sufficient evidence to establish the applicability of the first mitigating condition. *Id.* at ¶ 26(a).

The Individual has not provided evidence of any actions to support his abstinence from marijuana, nor has he brought forth sufficient evidence for me to conclude that he has not used marijuana since 2018 as he claimed. Thus, I find the second mitigating condition inapplicable to the facts of this case. *Id.* at ¶ 26(b).

The third mitigating condition is inapplicable because the LSO did not allege that the Individual abused prescription drugs. *Id.* at ¶ 26(c). The fourth mitigating condition is inapplicable because the Individual did not assert that he participated in a drug treatment program. *Id.* at ¶ 26(d).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline H are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

D. Guideline J

Conditions that could mitigate a security concern 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; or,
- (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.

Id. at ¶ 32.

As noted above, the Individual has established a pattern of committing alcohol-related offenses even after the passage of many years without committing an offense. Moreover, his continued alcohol consumption and the opinion of the DOE Psychologist that his AUD impairs his judgment and reliability places him at significant risk of future alcohol-related offenses. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because the Individual did not assert that he was pressured or coerced into committing any of the offenses cited by the LSO. *Id.* at ¶ 32(b). The third mitigating condition is inapplicable because the Individual does not deny that he committed the offenses cited by the LSO. *Id.* at ¶ 32(c).

The Individual remains on probation for his 2021 DUI and did not supply evidence of the terms of his probation or that he is fully complying with them. Moreover, as noted above, the Individual

has reoffended even after periods of many years without an alcohol-related offense. Although the Individual stressed his good employment record and job skills as considerations warranting restoration of his access authorization, I find that these considerations alone are insufficient to overcome the concerns raised by his significant history of unlawful conduct. For these reasons, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 32(d).

Having concluded that none of the mitigating conditions under Guideline J are applicable in this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline E, Guideline G, Guideline H, and Guideline J of the Adjudicative Guidelines. After considering all 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. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals