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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 19, 2023)	Case No.: PSH-23-0075
)	
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Issued: July 24, 2023

Administrative Judge Decision

Richard A. Cronin, Jr., 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 should not be granted an access authorization.

I. BACKGROUND

The Individual is the Chairman of the Board of a subcontractor at a DOE facility and is required to possess a security clearance. Transcript of Hearing (Tr.) at 56–57. On July 15, 2021, The Individual completed an SF-86 form "Questionnaire for National Security Positions" (QNSP). Exhibit (Ex.) 3 at 138.² In the QNSP, the Individual admitted having used marijuana during the prior seven years and to having been charged in July 1984 with Driving While Impaired (DWI). *Id.* at 127, 129. The Defense Counterintelligence and Security Agency (DCSA) conducted a further investigation of the Individual and completed its investigation on October 16, 2021. *Id.* at 60. Subsequently, the Local Security Office (LSO) sent the Individual a Letter of Interrogatory (LOI) asking him, among other things, about his alcohol and drug consumption. Ex. 4. In his response to the LOI, the Individual admitted to past cocaine, psilocybin, and peyote use in the 1970s and ending in 1980. Ex. 5 at 180. The Individual also admitted having used marijuana intermittently,

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 All DOE Exhibit page numbers referenced in this Decision refer to the Bates page number assigned to each page of the entire collection of DOE Exhibits and not to any individual page numbers contained in the separate exhibits.

beginning in the 1970s, and escalating his use to a regular basis in 2017 until he stopped his use in April 2021. *Id.*

The Individual was later referred for an examination to a DOE-contractor psychologist (DOE Psychologist). Ex. 6. As part of his examination, the DOE Psychologist had a urine test for Ethyl Glucuronide (EtG) and a blood test for Phosphatidylethanol (PEth) conducted on the Individual. *Id.* at 186. The EtG test indicated that the Individual had consumed a significant amount of alcohol in the prior 96 hours and the PEth test indicated that the Individual had been consuming alcohol on a regular, heavy basis within a few weeks of the test. *Id.*; Ex. 7, 8. Additionally, the DOE Psychologist administered a psychometric test, the Personality Assessment Inventory (PAI). Ex. 6 at 186. The PAI indicated that the Individual saw little need to change his behavior and that he may not be willing to make a commitment to therapy. *Id.* at 186–87.

In his December 2, 2022, report (Report), the DOE Psychologist found that the Individual’s EtG and PEth test results, along with the Individual’s self-reported alcohol consumption of “2 drinks at dinner time 4-5 times per week,” indicated that the Individual “habitually or binge consume[d] alcohol to the point of impaired judgment.” *Id.* at 187. To demonstrate adequate evidence of rehabilitation or reformation, the DOE Psychologist recommended “weekly counseling to address his denial and precontemplative stage of change regarding alcohol use for a period chosen by a therapist skilled in substance use treatment, of no less than 20 sessions.” *Id.* at 188. The DOE Psychologist noted that “[m]ost of [the Individual’s] free time is spent socializing with friends, exercising, playing music, and having dinner. The therapy would need to center on [the Individual] letting in . . . difficult information about himself and the corresponding emotion [evoked by discussion of such emotions].” *Id.*

The DOE Psychologist’s Report also found that the Individual had “an emotional, mental, or personality condition or conditions that can impair judgment, stability, reliability, or trustworthiness.” *Id.* During the DOE Psychologist’s examination, the Individual reported that he and his current wife had relationship problems and contemplated separating, and currently have not engaged in sexual activity since 2016. *Id.* The DOE Psychologist noted that the Individual had two extramarital affairs while married to his first and current wife.³ *Id.* at 184, 186. In this regard, the DOE Psychologist found:

[The Individual] also has a general dissatisfaction with the mundane, in and out of everyday life and needs stimulation to stay engaged. This aspect of his personality has influenced him to have multiple affairs, at least one of which he has the intelligence, planning, and foresight to keep completely hidden from his spouse over the course of two years, meeting at least twice weekly for sex. This aspect of his personality poses the willingness to engage in calculated risky behavior. This together with excessive drinking may influence him to make impulsive, opportunistic decisions at times that could compromise his closest relationships. He may be especially impulsive if sexual pleasure presents opportunistically.

³ The Report notes that the second affair occurred in 2018 which would have occurred during his current marriage. Ex. 6 at 184. However, the next sentence of the Report states that the Individual had no extramarital affairs during his current marriage. *Id.* At the hearing, the DOE Psychologist testified that he may have given the incorrect date for the second affair. Tr. at 184–85; *see supra*.

Id.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility to possess an access authorization. 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), Guideline H (Drug Involvement and Substance Misuse) and Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 5. 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 9 exhibits (Exs. 1–9) and presented the testimony the DOE Psychologist. Tr. at 158. The Individual submitted four exhibits (Exs. A–D). The Individual testified on his own behalf and offered the testimony of his wife, a counselor (Counselor), and the Chief Executive Officer (CEO) of his employer. Tr. at 15, 54, 86.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guidelines G, H, and I of the Adjudicative Guidelines as the basis of its concerns about granting an access authorization for the Individual. Ex. 1. Regarding Guideline G, the Adjudicative Guidelines note that “[e]xcessive 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 Report opining that the Individual habitually or binge consumed alcohol to the point of impaired judgment based upon the Individual’s report of his alcohol consumption, the results of the Individual’s EtG and PEth tests, and his July 1984 arrest for DWI. Adjudicative Guidelines at ¶ 22(a) (alcohol-related incidents away from work, such as driving while under the influence); ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder); Ex. 2 at 53–54. Given this information, the LSO was justified in invoking Guideline G.

Adjudicative Guideline H states:

The illegal use of controlled substances . . . and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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 LSO cited as derogatory information under Guideline H the Individual’s admission in his response to the LOI that he had used marijuana regularly from April 2017 to March 2021. Ex. 2 at 55. Also cited were the Individual’s admissions in his LOI response that he had used marijuana

beginning in 1973, cocaine in 1976, psilocybin in 1976 and peyote in 1979. *Id.* In light of the Individual's admitted illegal drug use, the LSO had sufficient grounds to invoke Guideline H.

The LSO also cited derogatory information falling under Guideline I. *Id.* at 55–56. Cited under this concern was the DOE Psychologist's determination that the Individual had a mental, emotional, or personality condition which could impair his judgment and trustworthiness. *Id.* at 55; Adjudicative Guidelines at ¶ 28(b) (opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness). The LSO cited the DOE Psychologist's Report's finding that the Individual had a dissatisfaction with the mundane and needed stimulation to stay engaged and that this aspect of his personality influenced him to have two affairs, one of which he kept hidden from his then spouse for two years. *Id.* Also cited was the Report's finding that the Individual's personality contained the willingness to engage in risky behaviors and that, combined with his excessive alcohol consumption, may influence him to make impulsive, opportunistic decisions, especially ones that involve sexual pleasure. Adjudicative Guidelines at ¶ 28(a) (behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors); Ex. 2 at 55. Given the DOE Psychologist's Report, I find that the LSO had adequate grounds to invoke Guideline I.

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 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 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 to permit the introduction of a 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

The Individual's Wife testified that she met the Individual in 2010 and married him in 2011. Tr. at 17. When she first met him, she did not observe the Individual consume alcoholic drinks. *Id.* at 19. When he resumed consuming alcohol in 2011, the Individual told her it was for a concern over his weight and for "weight management." *Id.* She confirmed the Individual's response to the LOI that he would consume two to three drinks on four or five days of the week during social events. *Id.* at 20. She had rarely seen the Individual intoxicated, and if he was intoxicated it would usually occur during a family event. *Id.*

The Individual's Wife stated that the Individual stopped consuming alcohol in April 2023. *Id.* at 22. The Individual's expressed motivation was that he was seeking a healthier lifestyle. *Id.* at 23. The Individual asked her for support in pursuing abstinence and she has been supportive of his decision. *Id.* at 26. While their house has alcohol on the premises, it is used for when a musical group the Individual belongs to practices at their house. *Id.* The members of the group will consume alcohol, but the Individual does not. *Id.*

When she first met the Individual, she had not observed him using illegal drugs. *Id.* at 28. Eventually, she became aware that he was using marijuana when he went on extended bike rides with his friends approximately three times a week. *Id.* at 28–29. She testified that the Individual would use the marijuana for pain relief during the ride. *Id.* at 35–36. However, she has not observed him use marijuana in approximately two years prior to the hearing. *Id.* at 29. She also testified that he had told her about his experimental drug use while as a youth and has never seen the Individual use illegal drugs other than marijuana. *Id.* at 29–30, 35. She is also unaware of any of the Individual's friends being users of illegal drugs. *Id.* at 36–37. She believes that the Individual is reliable and trustworthy and has not demonstrated any instances of poor judgment. *Id.* at 30. She has no doubts regarding the fidelity of the Individual within their marriage. *Id.* at 39. When asked about the Individual's life while home, the Individual's wife described the Individual as living a structured life with a set routine which ends with them going to bed at 10:30 p.m. *Id.*

The CEO testified that he first met the Individual in 2007. *Id.* at 56. The Individual has been Chairman of the Board for their company since they first met. *Id.* The CEO has observed the Individual at a number of business and social events and has observed the Individual consuming alcoholic beverages. *Id.* at 64. However, when the CEO observed the Individual consuming alcohol, it was usually just one glass of wine. *Id.* at 64. Given their interactions in managing the company, he has a great deal of trust in the Individual. *Id.* at 73. He has a high opinion of the Individual's trustworthiness, reliability and judgment. *Id.* at 77–81.

The Individual submitted into the record a written report from his Counselor which states that the Counselor has seen the Individual for 8 sessions and has scheduled 5 additional sessions. Ex. A. The report states that the Individual informed him that he stopped consuming alcohol on April 8, 2023, prior to receiving the DOE Psychologist's Report on April 12, 2023. *Id.* at 1. The Counselor states in his report that the Individual has made significant gains in working with the Counselor and that he has committed to have one year of abstinence from alcohol. *Id.* Additionally, the Individual submitted into the record negative PEth test results from May 8, May 26, and June 12, 2023. Ex. B, C, D.

At the hearing, the Individual's Counselor testified that he is currently treating the Individual for alcohol misuse. Tr. at 91–92. The Individual informed the Counselor about the DOE

Psychologist's Report and that he wanted to address his issues with alcohol. *Id.* at 91. He also informed the Counselor that he had stopped consuming alcohol prior to their first session. *Id.* at 91–92. The Individual shared a copy of the Report with the Counselor. *Id.* at 94. When asked if he agreed with the DOE Psychologist's evaluation of the Individual's alcohol consumption as excessive or binge drinking, he replied " I think it's fair to say that he was drinking more than would be considered the standard prior to his discontinuing." *Id.* He went on to testify that the Individual, at the time of their first sessions, stated that his prior consumption of alcohol was having minimal impact on his daily functioning, and that he thought that his consumption had been "normal" despite the fact that his consumption exceeded the standards for nonproblematic alcohol consumption. *Id.* at 95. The Counselor believes that the Individual now sincerely believes that he has an alcohol problem. *Id.*

The Counselor believes that, in determining whether the Individual has shown adequate evidence of rehabilitation or reformation, "there is no substitute for the test of time." *Id.* at 97. The Counselor testified that the Individual is committed to objective testing for alcohol consumption and that he has reviewed the Individual's the positive PEth and EtG conducted at the time of the DOE Psychologist's evaluation and the Individual's negative PEth performed after this evaluation. *Id.* at 94; *see* Ex. B, C, D (Individual's PEth test results). Further, the Counselor's own approach to therapy is to make recommendations only if warranted and that given the Individual's progress in abstaining from alcohol, he has not made specific recommendations to the Individual. *Id.* at 99. When asked as to how long the Individual needs to continue with his current program to increase the likelihood of success in resolving his alcohol problem, the Counselor answered, "[w]ell, always the longer the better, but, you know, I think we'll know a lot . . . in three months times, in six months' time. I think our rough plan is to continue for about six months." *Id.* at 99–100. He also opined that the Individual's abstinence during the month after the hearing would "be material." *Id.* at 124. As for the Individual's prior use of illegal drugs, the Counselor has not seen anything that suggests that the Individual is currently using such substances. *Id.* at 101.

When asked about whether the Individual's extramarital affairs cause him concern about the Individual's alcohol problem, the Counselor noted that he has seen such behavior occurring increasingly among individuals but that it did not cause him concern regarding the Individual's alcohol misuse. *Id.* at 104. With regard to the issue as to whether the Individual's two instances of infidelity would cause him to have concerns about the Individual's trustworthiness and judgment, the Counselor testified "I think those are real and significant things in his past and I think, you know, we shouldn't overlook any person's past, but I don't believe that these things are going to prevent him from being a reliable and trustworthy person moving forward." *Id.* at 107. The Counselor also found that the Individual did not have "a general dissatisfaction with the mundane" and that he did not view the Individual as "dissatisfied with the day-to-day vicissitudes of life and I don't see you -- I see you pursuing things that are of a more assertive, common, and rhythmic variety." *Id.* at 111.

The Individual confirmed in his testimony that his response to the LOI accurately described his prior alcohol consumption pattern as two to three drinks four to five days a week and that he would become intoxicated approximately once a month. *Id.* at 134–35. He testified that in his sessions with the Counselor, he initially believed that his alcohol consumption may have been "excessive," but he learned from his Counselor that the only healthy amount of alcohol to consume was "zero" and that he eventually realized his alcohol consumption was "problematic." *Id.* at 137–38. The

Individual testified that after consulting with his Counselor he made plans to abstain from alcohol for at least one year and to continue with their sessions for a period of six months “or so.” *Id.* at 140. The frequency of the Individual’s sessions with the Counselor would depend on his progress. *Id.*

The Individual also testified that he has not used any illegal substance other than marijuana since 1985. *Id.* at 144. As for marijuana, his initial period of use ended in 1988 and afterwards he would use it on rare occasions. *Id.* In 2017, he began to use marijuana on a regular basis when he participated in group bike rides or races two or three times a week. *Id.* at 145. His use was prompted by the pain and discomfort he experienced on these bike rides as a result of several surgeries to his back. *Id.* The Individual further elaborated “I found the marijuana kind of diminished the pain and, you know, it maybe [sic] helped with the monotony of a long bike ride.” *Id.* The last time the Individual used marijuana was in April 2021. *Id.* at 146. When asked if he knew whether marijuana was a controlled substance under federal law, the Individual testified “I guess it's, you know, it's hard to have a real clear perspective because it has been decriminalized or legalized in so many states and I probably don't consider it at a federal level so much as a state level, but I guess for the most part it seems to have an increased acceptance nationally.” *Id.* The Individual did acknowledge that he knew marijuana was illegal in the state of his residency. *Id.* at 147.

Regarding some of the information the DOE Psychologist cited in his diagnosing the Individual as suffering from a mental, emotional, or personality condition which can impair his judgment and trustworthiness, the Individual stated that the DOE Psychologist had made a number of factual errors in the Report, such as stating that the Individual had multiple affairs when in reality he had only two, both of which occurred during the marriage to his first wife. *Id.* at 153. The Report stated that the second affair occurred in 2018 (during his current marriage) when in reality it occurred in 2008 or 2009. *Id.* If the Individual was presented with the opportunity for a sexual relationship outside his current marriage, he would decline. *Id.* at 155.

The DOE Psychologist testified to the nature of the examination he performed on the Individual which involved a clinical interview, psychometric testing, and an assessment of the Individual’s alcohol use. *Id.* at 161. He testified that the Individual’s PAI results indicated that he might be hesitant or have difficulty receiving treatment. *Id.* at 163. After considering all the information before him, the DOE Psychologist did not find that the Individual had a diagnosable alcohol use disorder as defined by the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition*. However, based upon data from the Centers for Disease Control (CDC) definition of excessive, heavy, and binge drinking, along with the Individual’s positive PEth and EtG tests, he found that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment. *Id.* at 165; Ex. 6 at 187 (DOE Psychologist citing CDC definition of "excessive", "heavy" and "binge" drinking for men as consuming five or more standard drinks per occasion or more than two standard drinks per day averaged over a 30-day month). Regarding the Report’s recommendation for rehabilitation or reformation, he noted that at the time of the examination the Individual did not see his alcohol consumption as a problem and it was not negatively affecting his relationships or work, therefore he concluded that the prognosis for changing his behavior was poor. *Id.* at 171.

Based upon hearing all of the testimony at the hearing, the DOE Psychologist opined that he thought that the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.*

After hearing the Individual's testimony, the DOE Psychologist noted his belief that the Individual still had not fully accepted his alcohol consumption as a problem and does not believe that it is negatively affecting his life. *Id.* at 173. Because the Individual does not see his alcohol consumption as a problem, it would be easy for the Individual to resume consuming alcohol "once people are off his back." *Id.* The DOE Psychologist concluded that for the Individual to demonstrate adequate evidence of rehabilitation or reformation, the Individual would have to demonstrate abstinence for an entire year along with regular EtG and PEth testing. *Id.* at 173–76.

As for his diagnosis of the Individual as having a "mental condition," the DOE Psychologist pointed out that the Individual was able to hide his first affair from his family for two years due in part to his superior intelligence. *Id.* at 178. This indicates an ability to hide derogatory information about himself from others. *Id.* at 178–79. Further, his second affair involved a brief impulsive decision to have a sexual liaison.⁴ *Id.* at 179. Given that the Individual does not have much sexual satisfaction in his life other than pornography and self-gratification this raises the possibility of an impulsive act. *Id.* The DOE Psychologist also noted that the Individual expressed irritation with having to answer intrusive questions about himself and his "challenge" (delays) in getting the PEth and EtG test requested by the DOE Psychologist at the time of his examination. *Id.* at 181. He also noted the Individual's hesitancy at the hearing to fully acknowledge that he violated the law when he used marijuana. *Id.* at 182. The DOE Psychologist affirmed his belief that these factors support his determination that the Individual had an emotional, mental, and personality condition that could impair his judgment, reliability, or trustworthiness. *Id.* at 181–84.

V. ANALYSIS

A. Guideline G

The Guideline G security concerns center on the Individual's misuse of alcohol. An individual may mitigate security concerns under Guideline G, if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

⁴ The Individual reported to the DOE Psychologist that he "took the opportunity to sleep with an old friend in [town and state] . . ." Ex. 6 at 184.

(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. After reviewing the exhibits and testimony, I find that the Individual has failed to resolve the concerns raised in the SSC.

The Individual's concerning drinking pattern continued until April 2023, just two months prior to the hearing. Consequently, given the recency and frequency of the Individual's concerning alcohol use, I cannot conclude that the mitigating factor described in ¶ 23(a) is applicable in this case. Similarly, I find that mitigating factor ¶ 23(b) is inapplicable because with only approximately two months of abstinence, the Individual has not demonstrated "a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations." Both the DOE Psychologist and the Counselor's testified that the Individual needed a longer period of abstinence in order to demonstrate rehabilitation or reformation.

With respect to mitigating factor ¶ 23(c), I note that the Individual is participating in a treatment program with his Counselor. Further, there is no evidence before me which suggests that the Individual has a previous history of treatment and relapse. The last requirement contained in ¶ 23(c) is that the Individual is making satisfactory progress in his treatment program. Based upon the evidence before me, I cannot make this finding because I cannot conclude that the Individual is making satisfactory progress in his treatment program given the recency of the Individual's abstinence. I note the Counselor testified that, as of the date of the hearing, the ability of the Individual to remain abstinent "would be material" and that he would be able to provide more insight as to the Individual's condition in three to six months from the date of his abstinence. Tr. at 99–100, 124. In the present case, the Individual, as of the date of the hearing, has only been abstinent for approximately two months. Consequently, I do not find that the mitigating factor described under ¶ 23(c) is applicable in this case.

Mitigating factor ¶ 23(d) is not applicable since the Individual has not completed a treatment program with the Counselor nor as discussed above, has he demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

In summary, after reviewing the exhibits and the testimony presented in this matter, I do not find that the Individual has presented sufficient evidence to fully resolve the Guideline G security concerns raised in the SSC.

B. Guideline H

The Guideline H security concern arise from the Individual's past intermittent use of cocaine, psilocybin, and peyote beginning in the 1970s and ending in 1980 along with his recent period of regular marijuana use which ended in April 2021. Security concerns raised by Guideline H derogatory information may be mitigated if:

(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.

Adjudicative Guidelines ¶ 26.

I do not find that mitigating factor ¶ 26(a) is applicable in this case. The Individual's last use of marijuana occurred relatively recently in April 2021 and his use of marijuana was not an infrequent event, occurring two or three times a week during his bicycle outings. I also cannot find that the Individual's marijuana use is unlikely to recur. The Individual has not sought any specific treatment program for his marijuana use and unfortunately, the pain from the Individual's back may provide incentive for resumed marijuana use. I also note that the Individual was willing to use marijuana as a mature adult past retirement age and having knowledge that such use was illegal in his state of residence. *See* 10 C.F.R. § 710.7(c) (noting that an individual's "knowledgeable participation" in derogatory conduct and "age and maturity" at the time of the derogatory conduct must be considered in applying the Adjudicative Guidelines). In this regard, I find that the Individual's own testimony concerning his uncertainty as to the legality of marijuana indicates a lack of appreciation that marijuana use is inconsistent with possession of a security clearance.

As for mitigating factor ¶ 26(b), I note that the Individual has admitted his prior illegal drug use. Most of the illegal drugs the Individual used, as cited in the SSC, cocaine, psilocybin, and peyote, were used several decades in the past and there is no evidence of any additional use since 1980. As such, I find that given the extended period of abstinence from these drugs, the Individual has established a pattern of abstinence sufficient to invoke mitigating factor ¶ 26(b). However, I do not believe that the Individual has established an adequate pattern of abstinence from his prior marijuana use sufficient to invoke ¶ 26(b). Specifically, the Individual has not demonstrated that he has disassociated himself from his friends with whom he obtained or used marijuana. Adjudicative Guidelines at ¶ 26(b)(1). Nor is there evidence indicating that the Individual has changed the environment where he used marijuana or provided "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.” Adjudicative Guidelines at ¶ 26(b)(2)–(3). While there is no evidence that the Individual has used marijuana since April 2021, he has not engaged in any treatment or educational program that could increase the probability that he would not resume marijuana use. His current treatment program centers primarily on his alcohol use problem. Consequently, for these reasons and the reasons discussed in my discussion of ¶ 26(a), I do not find that mitigating factor ¶ 26(b) is applicable to the Individual regarding his prior use of marijuana.

I further find that neither of the mitigating factors described in ¶¶ 26(c) and (d) are applicable in this case. The Individual’s illegal drug involvement did not originate from abuse of prescription drugs thus negating the applicability of ¶ 26(c). Regarding ¶ 26(d), there is no evidence that the Individual has engaged in a drug treatment program thus making this mitigating factor inapplicable in this case.

I find that the Individual has not submitted sufficient evidence to fully resolve the security concerns raised by the Guideline H derogatory information described in the SSC.

C. Guideline I

The Guideline I security concerns described in the SSC involve the DOE Psychologist’s finding in his Report that the Individual has an emotional, mental, or personality condition that could impair judgment, stability, reliability or trustworthiness. An individual may mitigate security concerns under Guideline I if:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of reoccurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guideline at ¶ 29.

The DOE Psychologist’s determination regarding the existence of a mental condition was initially based upon his belief that the Individual had two extramarital affairs, a two-year affair in 2005 and

a brief affair in 2018 during the Individual's current marriage. As indicated in the Report, the DOE Psychologist found that this indicated a willingness to engage in risky behavior. Ex. 6 at 188. The DOE Psychologist believed that this indicated a "dissatisfaction with the mundane" and that combined with his then alcohol consumption might lead him to make opportunistic decisions that could compromise his closest relationships especially if these opportunities involve sexual pleasure. *Id.* As noted above, the DOE Psychologist testified as to other factors such as a lack of opportunities for sexual gratification and his reluctance to fully admit at the hearing that he had violated laws concerning possession of marijuana as additional factors supporting his determination. Additionally, at the hearing the DOE Psychologist cited the Individual's "challenges" in getting the requested PEth and EtG tests as supporting this conclusion.

The Counselor did not find any condition in the Individual that would prevent him from being trustworthy. Further, I find that the Individual has presented believable testimony that indicates his last affair actually occurred in 2008 or 2009. Significantly, the DOE Psychologist conceded that he probably erred when he noted in the Report that the second affair occurred in 2018.

The primary factor in the DOE Psychologist's opinion regarding the existence of a mental condition centered on the Individual having been unfaithful to both of his wives. Because I believe that the Individual only had affairs during his first marriage, and that this occurred some 14 years in the past, I find that the DOE Psychologist's opinion is less than convincing. The Individual has presented testimony from his current wife and the CEO indicating that the Individual has consistently demonstrated reliability and trustworthiness. Further, I find nothing in the record before me that indicates that the Individual has exhibited conduct that indicates that he has acted in an untrustworthy manner to others since 2009. Given these considerations, I find that mitigating factor ¶ 29(e) is applicable in this matter and that there is no indication that the Individual has a current mental condition. Consequently, I find that the Individual has resolved the Guideline I security concerns as described in the SSC.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G, H, and I 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 brought forth sufficient evidence to resolve the Guideline I concerns. However, I also find that the Individual has not brought sufficient evidence to resolve the Guideline

G and H security concerns. Accordingly, I have determined that the Individual should not be granted an access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals