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

In the Matter of: Personnel Security Hearing)
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Filing Date: June 7, 2023) Case No.: PSH-23-0092
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Issued: August 30, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be granted.

I. Background

The Individual is currently employed with a DOE contractor in a position that requires him to hold an access authorization. The Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in March 2022. Exhibit (Ex.) 10 at 53. In the QNSP, the Individual disclosed that in 2017 and 2021, he was fired by two previous employers for rules violations. *Id.* at 21–26. The Individual also disclosed that he was found guilty of two criminal offenses involving alcohol consumption in 2007 and 2012. *Id.* at 42–44. As part of the review for his eligibility for access authorization, the Individual was required to undergo an Enhanced Subject Interview (ESI), which was conducted by an investigator in May 2022. *Id.* at 61. During the ESI, the Individual provided information regarding his previous terminations, criminal charges, and matters not previously disclosed in the QNSP. *Id.* Thereafter, the Local Security Office (LSO) asked the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist). Ex. 11. The DOE Psychologist, after conducting a clinical interview in January 2023, reviewing the Individual’s Personnel Security File, administering tests, and consulting the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V), and issued a report

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.

(Report) of her findings, which included a diagnosis of Alcohol Use Disorder (AUD), Mild, in partial remission.² *Id.* at 1, 3.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines D (Sexual Behavior), E (Personal Conduct), G (Alcohol Consumption), I (Psychological Conditions), and M (Use of Information Technology) of the Adjudicative Guidelines. Ex. 2. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). Ex. 5. The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf, presented the testimony of his current coworker and his supervisor, and submitted one exhibit, marked as Exhibit A. The DOE Counsel submitted twelve exhibits marked as Exhibits 1 through 12 and presented the testimony of the DOE Psychologist.

II. The Summary of Security Concerns

A. Guideline D

Conditions that could raise a security concern under Guideline D include “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.” *Id.* at ¶¶ 12 and 13(c).

The LSO alleged that the Individual stated that he has been dressing in women's clothing since his youth to “experience[] reduction in stress and sexual gratification[]” and he “engage[s] in the activity on and off to present, feeling the compulsion to do so during times of significant stress.” Ex. 3 at 4. The LSO also alleged that only the Individual's spouse knows of this activity and that the Individual keeps this information from others as “he believes that knowledge of his proclivities would be damaging to his personal and professional reputation and degrade others' opinions of him to the extent that he admitted vulnerability to blackmail as a result.” *Id.* Lastly, the LSO alleged that the Individual would “not be willing to make” this activity “known to others in order to mitigate the potential for blackmail[,]” as he believed that this information “would irreparably harm his reputation.” *Id.* The LSO's concerns under Guideline D are justified.

B. Guideline E

Under Guideline E, “[c]onduct involving questionable judgement, 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.” Adjudicative

² At the hearing, the DOE Psychologist indicated that the correct diagnosis was AUD, Mild, but that the Individual was not in partial remission because he had not stopped consuming alcohol. Hearing Transcript (Tr.) at 105–06, 110–11.

Guidelines at ¶ 15. Conditions that could raise a security concern include “[c]redible adverse information that is not explicitly covered under any other guideline . . . but which, combined with all available information, supports a whole-person assessment of questionable judgment . . . lack of candor, unwillingness to comply with rules[.]” *Id.* at ¶ 16(d). These considerations include “[e]vidence of significant misuse of Government or other employer’s time or resources[.]” *Id.* at ¶ 16(d)(a).

The LSO alleged that the Individual admitted that while he was employed by Employer 2 in 2019, he had taken his personal computer to work, which he knew was against his employer’s policies, and he initially justified his use of his personal computer by stating that he was using the computer “to monitor a [closed-circuit television (CCTV)] camera system . . . to avoid network disruptions by having the CCTV network and company network operating simultaneously on the same system.” Ex. 3 at 5. As the LSO alleged, the Individual admitted that this was secondary to his desire to use the computer to “engage in personal business and online activities[.]” including “search[ing] for and access[ing] pornographic websites[.]” which was discovered by a supervisor who saw the pornographic material on his computer, resulting in the Individual’s suspension and termination in 2021 for the “deliberate misuse of company equipment and company time.” *Id.* Regarding this matter, the LSO also alleged that the Individual admitted that “his activities were not a good use of company time and amounted to theft of time[.]” *Id.* at 4–5.

Also pertaining to Guideline E, the LSO alleged that the Individual was suspended, then terminated following a hearing in 2017 from employment with Employer 1, because from 2015 through 2016, the Individual would use the company vehicle to leave work approximately ninety minutes early about one to three times per week so that he could go to the gym. *Id.* at 5. The SSC stated that the Individual “believed that having completed his work early, he had extra time and began choosing to use that time for personal business[.]” and that the Individual knew he was using the vehicle in violation of company policy, but that he “justified his personal use of the company vehicle and did not have the expectation of being discovered.” *Id.*

The LSO also alleged that in 2012, the Individual submitted a fraudulent Federal Communications Commission (FCC) Operator License to his employer, as his position required such a license, after finding a fillable form online. *Id.* at 5–6. The Individual “admitted that his behavior exhibited a lack of judgment and integrity.” *Id.* at 6. Finally, the LSO alleged that the DOE Psychologist opined in the Report that the Individual’s “most recent employment history displayed his disregard for the rules and his difficulty accepting the gravity of his actions suggests his judgment and decision making are unreliable.” *Id.* The LSO’s concerns under Guideline E are justified.

C. Guideline G

Under Guideline G of the Adjudicative Guidelines, “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. Conditions that could raise a concern under Guideline G include “[a]lcohol-related incidents away from work, such as driving while under the influence . . . or other incidents of concern,” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder.” *Id.* at ¶ 22(a) and (d).

The LSO alleged that the Individual was found guilty of Consumption of Alcohol by a Minor in October 2007 following his hospitalization due to alcohol poisoning, and that he was arrested and charged with Driving Under the Influence (DUI) in February 2012 and was subsequently ordered to seek counseling. Ex. 3 at 6. The LSO also alleged that the DOE Psychologist diagnosed the Individual with AUD, Mild, in partial remission, and stated in the Report that “the diagnosis may be an underrepresentation of his current use of alcohol due to his highly guarded response style during the evaluation,” and that the Individual’s “highly guarded responses and attempts to present unrealistically high levels of control likely minimized his endorsement of current levels of distress[.]” *Id.* Lastly, the LSO alleged that the DOE Psychologist opined that the Individual’s pattern of alcohol consumption “suggests that his decision making is negatively impacted when using alcohol and his continued use of alcohol will likely compromise his judgment.” *Id.* The LSO’s concerns under Guideline G are justified.

D. Guideline I

Under Guideline I, “[c]ertain emotional, mental, and personality conditions can impair one’s judgment, reliability, or trustworthiness.” Adjudicative Guidelines ¶ 27. “A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” *Id.* Conditions that could raise a security concern and may be disqualifying include “[b]ehavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline[.]” and “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[.]” *Id.* at ¶ 28(a) and (b).

Under Guideline I, the LSO realleged the allegation that the DOE Psychologist opined in the 2023 Report that the Individual’s “most recent employment history displayed his disregard for the rules and his difficulty accepting the gravity of his actions suggests his judgment and decision making are unreliable.” Ex. 3 at 6–7. The LSO realleged the allegations made under Guideline G, restating that the Individual had been diagnosed with AUD, Mild, in partial remission, that “the diagnosis may be an underrepresentation of his current use of alcohol due to his highly guarded response style during the evaluation,” and that the Individual’s “highly guarded responses and attempts to present unrealistically high levels of control likely minimized his endorsement of current levels of distress[.]” *Id.* The LSO also realleged that the DOE Psychologist opined that the Individual’s pattern of alcohol consumption “suggests that his decision making is negatively impacted when using alcohol and his continued use of alcohol will likely compromise his judgment.” *Id.* As discussed in the analysis below, I find that these allegations are not properly raised under Guideline I.

E. Guideline M

Under Guideline M, “[f]ailure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual’s reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.” Adjudicative Guidelines at ¶ 39. “Information Technology includes any computer-based, mobile, or wireless device used to create, store, access,

process, manipulate, protect, or move information.” *Id.* Conditions that could raise a security concern under Guideline M include the “unauthorized use of any information technology system[.]” *Id.* at ¶ 40(e).

Under Guideline M, the LSO realleged the allegations made under Guideline E pertaining to the inappropriate use of the Individual’s personal computer while he was in the employ of Employer 2, which ultimately resulted in his termination. Ex. 3 at 7. The LSO’s concerns under Guideline M are justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 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

During the ESI, the Individual disclosed to the investigator that his employment with Employer 1 was suspended because he “fabricat[ed] and furnish[ed] a fraudulent FCC Operator License to his supervisor.” Ex. 10 at 67; Tr. at 71. The Individual explained that in August 2012, he applied for a position which required an FCC Operator License. Ex. 10 at 67. Although the Individual knew the license could be obtained by passing an examination, he had not taken the examination at the time he accepted the position. *Id.* His employer made repeated requests for the license and after a final request was made, the Individual, “knowing he had not taken the exam...decided to forge a copy of the document to buy . . . time to obtain the real license.” Ex. 10 at 67; Tr. at 71–72. The Individual “found a fillable FCC License operator form through a Google search and input his information into the form.” Ex. 10 at 67; Tr. at 72. He testified that whenever he was asked for the license, he would tell management that he would provide it another day. Tr. at 72. When he submitted the forged license to his employer, his employer was unable to verify the information contained in the forged license and asked the Individual if the license was real. Ex. 10 at 67; Tr. at

72. The Individual admitted he did not have his FCC Operator License and the license that he provided was forged. Ex. 10 at 67.

The Individual was subsequently suspended for several weeks. *Id.* During his suspension, he received his official FCC Operator License, provided the valid license to his employer, and his suspension was “cancelled.” *Id.* at 67–68. The Individual testified that during his suspension, he was “given the opportunity to obtain the license within [thirty] days.” Tr. at 71. The Individual admitted to the investigator that his behavior “exhibited a lack of judgment and integrity,” and he “was putting off getting his actual license because of a mindset that he didn’t really need it if it [was not] being asked for initially.” Ex. 10 at 68. At the hearing, the Individual testified that he did not give any thought to the possibility that his employer would try to verify the document. Tr. at 73.

The Individual disclosed in the QNSP that in April 2017, he was fired from the employ of Employer 1 for “leaving early.” Ex. 10 at 25; Tr. at 66. During the ESI, the Individual disclosed that, around 2015 or 2016, he left work early to “work out at the gym.”³ Ex. 10 at 64. He explained that one to two times per week, he would leave work approximately an hour to an hour-and-a-half early and use a company vehicle to go to a local gym. Ex. 10 at 65; Tr. at 67. His employer’s policy provided that company vehicles were “only supposed to be used to and from [an employee’s] home to their worksites.” Ex. 10 at 65; Tr. at 69. However, the Individual stated, “there was an unwritten policy and understand among the employees and management . . . that it was acceptable to use the vehicles to take care of personal business as long as doing so occurred on a direct route to or from work or home.” Ex. 10 at 65. In his testimony, the Individual indicated that he would use the company vehicle for this purpose in case he “needed to return to work[.]” Tr. at 70.

The Individual stated to the investigator that he was “following the lead of his peers and supervisors” and did not think his use of the company vehicle for this purpose would be discovered. Ex. 10 at 64–65; Tr. at 70. The Individual told the investigator that when he would complete all of his assigned tasks and had “nothing else to work on,” he would use the “extra time” for personal business. Ex. at 65; Tr. at 67. He also stated he was a salaried employee, so his income was consistent, regardless of the hours he worked. Ex. 10 at 65; Tr. at 68. In February 2017, the Individual was suspended by his employer for “[t]heft of time, misuse of company property and insubordination.” Ex. 10 at 66; Tr. at 66–67. During a subsequent disciplinary hearing, the Individual’s employer presented the Individual with “GPS logs showing [the Individual’s] assigned vehicle at locations other than designated worksites during company time[.]” Ex. 10 at 66. The Individual was ultimately terminated, and although he filed an appeal, his appeal was denied. *Id.* The Individual admitted to the investigator that “this incident did not result in a change to his behavior in subsequent jobs as he continued to engage in similar behavior” at his next employer. *Id.* He stated to the investigator that he believed his behavior was the result of “boredom,” as he did not have enough work to occupy him. *Id.*; Tr. at 68. He testified that he was aware this behavior was against company policy. Tr. at 69.

³ The Individual’s “job was primarily field based[.]” and accordingly, he would leave his last field location and would not return to work until the following morning. Ex. 10 at 65. He stated that he was never asked whether he was in the field or at work on these occasions. *Id.* He testified that he would leave the gym and proceed to his home. Tr. at 68.

During the ESI, the Individual disclosed that in late 2019, while employed with Employer 2, he felt bored as he had an “abundance of downtime” during the workday, so he brought his personal computer to the office to ensure he had “something to do.” Ex. 10 at 61. He initially told the investigator that he used his personal computer to monitor the employer’s CCTV video system, and “avoid network disruptions by having the CCTV network and the company network operating simultaneously on the same system.” Ex. 10 at 61; Tr. at 76. He stated that while his supervisors agreed that the system should be run on a separate network, the requisite equipment was not forthcoming, which was why he was using his personal computer. Ex. 10 at 61. However, the Individual later admitted to the investigator that he brought his personal computer to work “to have a separate computer to use that was not on the company’s network,” so he could “shop online and play computer games.” *Id.* at 62; Tr. at 75. The Individual also admitted he “used his personal computer to search for pornography,” stating that he would “identify pornography videos or titles that interested him and save the URL on an external storage device to be able to download and view the material at his home.”⁴ Ex. 10 at 62; Tr. at 75–76. In an attempt to explain his behavior, he stated “he had the extra time on many occasions because he had completed assigned work tasks and had nothing else to do.” Ex. 10 at 62, 64. The Individual also told the investigator that “[t]here was no damage or loss to company equipment as a result of” his actions, because “the company does not handle, store[,] or transmit sensitive or classified information.”⁵ *Id.* at 62; Tr. at 77. At the hearing, the Individual stated that “[t]he use of personal computers was not allowed[]” and that the computer was connected to the company CCTV surveillance network, but “not [the] enterprise network.” Tr. at 75–77.

It was revealed during the ESI that the Individual’s supervisor discovered the personal computer and observed pornography on the computer. Ex. 10 at 62; Tr. at 78. In April 2021, the Individual was suspended pending an investigation. Ex. 10 at 62–63. The Individual explained that for approximately three months in 2021, he sought counseling related to his suspension from employment with Employer 2 at a local counseling center. *Id.* at 76–77; Tr. at 85, 96. The Individual indicated that he was attending weekly ninety-minute sessions. Tr. at 85, 95. The Individual’s wife told the investigator that the Individual sought counseling because he “believed that seeking counseling would be the best way to either retain his job or get it back in the event he was terminated.” Ex. 10 at 96; Tr. at 86. The Individual confirmed that he felt it would “reflect well” on him, but that he also wanted to better understand himself and his behavior. Tr. at 85–86. In 2021, following the investigation and hearing, the Individual was terminated “for misuse of company equipment and misuse of company time[.]”⁶ *Id.* at 63; Tr. at 75. The Individual filed an appeal, and the appeal is currently pending. Ex. 10 at 63. Tr. at 41–42, 79, 83.

During the ESI, the Individual stated that with his current employer, “there is always something to be completed or worked on and he does not anticipate encountering the same amount of inactivity”

⁴ During the ESI and the hearing, the Individual denied searching for illegal pornographic material. *Id.*; Tr. at 78.

⁵ At the hearing, when asked if the company did not want employees to use personal computers “because [this act] could have divulged proprietary or sensitive information[,]” the Individual confirmed that was correct. Tr. at 85.

⁶ While the Individual told his current supervisor of this termination for “inappropriate material on a laptop at work,” he did not provide any further details related to the termination. *Id.* at 64; Tr. at 41–42, 84. His supervisor testified that he had assumed that the Individual had accessed pornographic material on his personal computer. Tr. at 42–43.

as he did as his prior jobs. Ex. 10 at 64. The Individual indicated that since joining his current employer, his “point of view” has changed, and he is doing something that he is “truly interested in” and “he can focus his efforts during those down or slow workdays towards improving himself professionally.” *Id.* at 66–67; Tr. at 81, 107. He testified that he is in a position that “has helped [him] stay on task and stop making . . . mental justifications, and telling [himself] that violating the rules is okay[.]” Tr. at 81.

The DOE Psychologist was made privy to the circumstances of Individual’s previous terminations, and her Report indicates she found the Individual “had difficulty describing any insight regarding his previous terminations,” that the Individual’s “ability to assess appropriate work-related behaviors may be compromised,” and that the Individual’s “judgment and decision making are considered unreliable.” Ex. 11 at 1–2, 4. The DOE Psychologist testified that the Individual would do well in a position in which there is “clear direction,” where “he knew the expectations,” and such “expectations were monitored[.]” Tr. at 114, 119. The DOE Psychologist stated her concern that if he was not closely monitored at work, then his undesirable behaviors would return. *Id.* at 119–21. She testified that the Individual was not making the connection that his terminations were consistent with “a pattern of disregard[.]” and accordingly, he was not taking responsibility for his actions. *Id.* at 118.

In the March 2022 QNSP and during the ESI, the Individual disclosed that in October 2007, he was found guilty of Consumption of Alcohol by a Minor, after being hospitalized for alcohol poisoning. Ex. 10 at 42, 70. He stated during the ESI that this incident occurred while he was in college. He consumed “almost a full bottle of Vodka,” over of period of three to four hours, and “passed out.” *Id.* at 70; Tr. at 56. The Individual was later treated at a hospital, and after he recovered, he was issued a citation for Consumption of Alcohol by a Minor. Ex. 10 at 79; Tr. at 57. The Individual admitted he “overestimated his tolerance for alcohol . . . and his young age and immaturity factored into his inability to determine his limits with alcohol.” *Id.* The Individual testified that he did not receive counseling after this incident and continued to consume alcohol. Tr. at 58.

As stated above, Individual disclosed in the QNSP that he was charged with DUI in 2012. Ex. 10 at 42–43. During the ESI, the Individual explained that prior to his arrest, he was drinking with friends and “consum[ed] mixed drinks containing [v]odka,” over five to seven hours. *Id.* at 71; Tr. at 59–60. The Individual disclosed that “he knew when he decided to leave [the location] that he was intoxicated” and drove himself home.⁷ Ex. 10 at 71. During his drive home, the Individual was seen driving on the wrong side of a highway, was pulled over by law enforcement, and was subsequently arrested. *Id.*; Tr. at 59. The Individual stated he was also charged with Driving with an Open Container because he had an open case of beer in the vehicle. Ex. 10 at 71; Tr. at 59. The Individual pled guilty to the DUI charge, which resulted in supervised probation that included ten hours of group counseling for alcohol, which the Individual completed. Ex. 10 at 71–72; Tr. at 61, 94. The Individual also stated that since his DUI, he “avoid[s] similar situations by not going out alone[.]” “having a designated driver if he plans on having more than [one to two] drinks,” and “he now draws the line at [two] drinks and will not drive if more is consumed.” Ex. 10 at 72; Tr.

⁷ At the hearing, when asked if he felt as though he was “okay to drive the car when [he] left” the bar, he testified that he did not recall. Tr. at 60.

at 105. He told the investigator that following the DUI, he was abstinent from alcohol for approximately six months.⁸ Ex. 10 at 73. He testified that he “slowly started” drinking alcohol again in early 2013, but there was no specific precipitating event. Tr. at 99.

Regarding his current alcohol consumption, the Individual told the investigator that he consumes about one or two glasses of wine or a mixed drink, once or twice per week. Ex. 10 at 73; Tr. at 63. The Individual indicated that “there [are] occasions in which he consumes more than [one to two] glasses [of wine]” and becomes intoxicated, but this occurs “less than once every few months.” Ex. 10 at 73. He described himself as a social drinker. Tr. at 64. However, the Individual reported to the DOE Psychologist and stated in later testimony that he consumes two to five alcoholic drinks, twice a week. Ex. 11 at 2; Tr. at 97–98. He also testified that he keeps “a significant amount of alcohol” in his home. Tr. at 98. In her testimony and in the Report, the DOE Psychologist noted that she used the Alcohol Use Disorder Identification Test and the Michigan Alcohol Screening Test to assess the Individual’s alcohol consumption, and both “indicated harmful use of alcohol.” Tr. at 111–12; Ex. 11 at 3. The Psychologist opined that the Individual “has a history of using alcohol to excess[,] which has caused personal and legal trouble.” *Id.* at 4. She went on to state in the Report that “[t]his pattern of suggests that [the Individual’s] decision making is negatively impacted when using alcohol.” *Id.* After the DOE Psychologist performed a “diagnostic interview and administered psychological testing,” she determined that the Individual met the applicable criteria for AUD, Mild, in partial remission. *Id.* at 3. The Psychologist also opined that “[d]ue to [the Individual’s] highly guarded response style . . . this diagnosis may be an underrepresentation of his current use of alcohol.” Ex. 11 at 3; Tr. at 111–13. The Report does not provide any treatment recommendations. Tr. at 123. The Individual testified that the court-ordered counseling in 2012 was the last time he received counseling for his alcohol consumption, and that he has not joined any support groups. *Id.* at 64. He also stated that although he is concerned over the AUD diagnosis and feels he should discuss it with his spouse, he does not feel that his alcohol consumption is problematic, and he intends “to maintain the same level of alcohol use[.]” Tr. at 65–65, 101–02. He also testified that he last consumed alcohol the day before the hearing, consuming two mixed drinks and a glass of wine. *Id.* at 99.

The DOE Psychologist testified and stated in the Report that based on the observations she made during the personality measures she conducted, the Minnesota Multiphasic Personality Inventory-3rd Ed. and the Millon Clinical Multiaxial Inventory-III, the Individual showed an “inability to disclose any type of distress[,]” which indicates that the Individual is “using denial to a marked degree.” Tr. at 112–113; Ex. 11 at 2–3. As the DOE Psychologist testified, this impacts the Individual’s disclosures regarding his alcohol consumption and there “may be a 40 to even 60 percent [underrepresentation] of alcohol consumption.” Tr. at 113. She testified that based on the information the Individual actually provided, she could not assign the Individual a diagnosis any more severe than AUD, Mild. Tr. at 113–114. The DOE Psychologist testified that to be in full remission, one must not consume alcohol for a full twelve months, but that based on the applicable research, “up to 86 percent of folks relapse within the first year.” Tr. at 115. When asked at the hearing if she recommended any kind of therapy, the DOE Psychologist indicated that she felt that the Individual “was surprised” by the findings she had made in her Report, and accordingly, he

⁸ During the hearing, the Individual testified that he was abstinent from alcohol “for about year[.]” following this incident. Tr. at 62, 95.

would benefit from outpatient therapy and support group. *Id.* at 116–117. At the hearing, the DOE Psychologist stated that the Individual did not provide adequate evidence of rehabilitation or reformation. *Id.* at 124.

Regarding his practice of wearing women’s clothing, the Individual disclosed to the investigator he has dressed in women’s clothing since his youth. Ex. 10 at 75; Tr. at 87. The Individual described his behavior as “a personal compulsion . . . from which he experiences reduction in stress and sexual gratification.” Ex. 10 at 75; Tr. at 87–88. As an adult, the Individual wears women’s clothing “on and off.” Ex. 10 at 75. He stated the last time he dressed in women’s clothing was after his termination from Employer 2, which was a period of high stress for him. *Id.* At the hearing, the Individual testified that he had last dressed in women’s clothing in the previous two months. Tr. at 88. The Individual explained to the investigator that he only dresses in women’s clothing at home and “he does not participate in public forums or events such as drag shows or exhibitions.” Ex. 10 at 75. The Individual also explained that his spouse is the only person who knows he dresses in women’s clothing. Ex. 10 at 75; Tr. at 88. He stated that he believes if other people knew, it would be “damaging to his personal and professional reputation,” “degrade others’ opinions of him,” and “irreparably harm his reputation.” Ex. 10 at 75. The Individual also explained to the investigator that should someone attempt to use this information to blackmail him, the “only option would be to inform a supervisor or legal authority of his [cross-dressing] behavior and the attempt to blackmail him . . . but also to avoid disclosing this information to any other individuals other than necessary to do so.” *Id.* The Report indicates the Individual’s practice of wearing women’s clothing has caused stress in his marriage, and the Individual “assured his spouse that he will refrain from participating in this activity due to the level of conflict” in his marriage. Ex. 11 at 2. The DOE Psychologist opined that the Individual’s use of women’s clothing “is not considered problematic or interfering with judgment or reliability[,]” and “[i]t does not seem to have resulted in any sexual disorder or addiction.” *Id.* at 4. At the hearing, the Individual testified that the more he discusses the matter with others, “the less [he feels] it would be detrimental to his reputation.” Tr. at 88. In later testimony, he said that he does not believe it will damage his professional reputation. *Id.* at 103. However, he does not feel that it would appropriate to “preemptively” discuss the matter with his supervisor, as it is not generally appropriate to discuss sexual behavior in the workplace, and further, he would not discuss it with individuals outside of DOE, because he would like to keep it private. *Id.* at 90–91. He would, however, be willing to disclose the matter to others “to alleviate the threat to national security.” *Id.* at 91, 107.

At the hearing, the Individual’s coworker and supervisor testified they have regular, in-person contact with the Individual. Tr. at 21–22, 27, 34. The Individual’s supervisor described him as a “fantastic” employee, and that he has “not had . . . one issue with him since he came on board[.]” *Id.* at 35. The Individual’s coworker and supervisor both testified that they have not seen anything concerning or inappropriate on the Individual’s computer, and the Individual’s coworker stated that the Individual has a good reputation.⁹ *Id.* at 23, 28, 35, 52. The Individual’s supervisor also indicated that he has never had issues with the Individual being “off task” or “unaccounted for” and denied that the Individual has any performance issues or misconduct. *Id.* at 36, 40. He indicated that the employees he supervises “[do not] really have much downtime” and that there is “not

⁹ The Individual’s good reputation in the workplace was echoed in a July 2023 letter authored by a current work colleague who did not testify. Ex. A. She indicated that the Individual “is an invaluable asset to [their] team[,]” and that the Individual is an “expert” in his field of work. Ex. A. She also indicated that the Individual “is known for his remarkable work ethic and reliability.” Ex. A.

enough time in the day to” to complete projects, and that he has never had any issues with the Individual “straying . . . outside of” the work that he has been assigned. *Id.* at 37–40. Although both witnesses indicated they have been in social situations with the Individual where the Individual has consumed alcohol, the Individual’s behavior has never been concerning or inappropriate, and further, the Individual’s coworker has never seen the Individual consume alcohol at work and has never smelled alcohol about his person at work. *Id.* at 25–26, 28–30, 44–45, 50–51. Both witnesses stated that they feel that the Individual is honest and trustworthy, and the Individual’s supervisor confirmed that he has never “observed [the Individual] violate any rules or procedures[.]” Both witnesses stated that they have never seen the Individual leave work “early or without permission.” *Id.* at 23–25, 45–46, 53.

V. Analysis

A. Guideline D

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline D include:

- (a) The behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) The sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (c) The behavior no longer serves as a basis for coercion, exploitation, or duress;
- (d) The sexual behavior is strictly private, consensual, and discreet; and
- (e) The individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Adjudicative Guidelines at ¶ 14.

The Individual has mitigated the concerns under Guideline D. The Individual credibly and fully answered the questions presented to him regarding this matter. It is clear from the record that the Individual engages in the stated behavior in his own home, keeping the matter private and discreet. During his testimony, the Individual credibly testified that he does not feel that this information could harm him professionally, and while there was some concern raised over the fact that the Individual stated that he would not disclose this information to others, I agree with the Individual’s assessment that matters of a sexual nature are not appropriate for discussion at work. I also believe

the Individual when he stated that he would disclose this information to mitigate any threats to national security should there be any threat of blackmail. Lastly, and importantly, the DOE Psychologist concluded that the Individual's "use of women's clothing is not considered problematic or interfering with judgment or reliability." Ex. 11 at 4. I believe that this assessment regarding his judgment and reliability extends to the ability or inability of another person to successfully blackmail or coerce the Individual using this specific information, and I have no reason to believe that the DOE Psychologist's assessment is incorrect. Accordingly, I believe that the Individual has mitigated the stated concerns pursuant to the mitigating factors (c) and (d).

B. Guideline E

The Adjudicative Guidelines provide that 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 reliability, trustworthiness, judgment, or willingness to comply with rules and regulations

Adjudicative Guidelines at ¶ 17.

As an initial matter, the allegations pertaining to the Individual's improper use of a personal computer while he was in the employ of Employer 2 were not correctly invoked under Guideline E. The applicable portion of Guideline E, which is cited above, requires that the adverse information "is not explicitly covered under any other guideline[.]" *Id.* at ¶ 16(d). As indicated in the SSC, the adverse information pertaining to the Individual's improper use of a personal computer is covered under Guideline M. Accordingly, it does not constitute a concern under Guideline E, and I will not consider it as part of my Guideline E analysis.

Regarding the remainder of the adverse information cited under Guideline E, what is clear from the record is that over the span of less than ten years and while in the employ of two different employers, the Individual engaged in dishonest behavior. Each time, whether it was trying to pass off a fraudulent license as genuine or leaving work early without being authorized to do so, the behavior continued until he was found out. This is very concerning behavior, especially because the Individual's testimony and the statements he made to the investigator revealed a notable lack of self-awareness. Specifically, the Individual stated that he engaged in this behavior because he was looking for ways to fill up his time at work, as he had already "completed the work he was assigned." Ex. 10 at 66. The fact that he felt there was no chance to improve his professional standing was also used as a justification for his behavior. He stated during his testimony and to the investigator that not only is he kept busy in his current position, but there are opportunities for professional improvement, and accordingly, he can spend his downtime productively. I have not seen or heard any evidence that the Individual understands that his behavior was inappropriate or dishonest. Instead, the Individual has only provided assurances that he can refrain from the dishonest behaviors as long as he remains busy and motivated at work. The Individual should be able to exercise appropriate judgment and self-control regardless of how much work he does or does not have, and current assurances that he is sufficiently engaged at work do nothing to mitigate the stated concerns.

As the LSO did not allege any concealment of fact or failure to cooperate, the mitigating factors at (a) and (b) are inapplicable. Further, as the Individual has not obtained any counseling for his behavior and I have no information suggesting the allegations came from unreliable sources, the mitigating factors at (d) and (f) are also inapplicable. The mitigating factor at (e) is also not applicable, as the LSO has not alleged any vulnerability to duress or manipulation as a result of the alleged behavior. And as the behavior was not the result of any association with persons involved in criminal activity, the mitigating factor at (g) is also not applicable.

Under mitigating factor (c), as the behavior occurred in the recent past, and as the Individual has not taken any steps to reach and articulate sufficient understanding that his behavior was inappropriate, I cannot conclude that this behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. For the above-stated reasons, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (c).

C. Guideline G

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

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

Adjudicative Guidelines at ¶ 23.

While I understand that the Individual's first alcohol-related charge took place when he was in college, that his second alcohol-related offense occurred in 2012, over ten years ago, and that he did not receive any treatment recommendations from the DOE Psychologist, I cannot conclude that the Individual has mitigated the stated concerns. Despite his denials of the same, the Individual has a history of problematic alcohol consumption. He has dealt with legal entanglements in the past, and more recently, he has been diagnosed with AUD. However, he continues to drink. Moreover, as the DOE Psychologist opined, he has likely underrepresented to DOE the amount of alcohol he consumes, which hampers DOE's ability to accurately assess the extent of the alcohol-related concern. While I understand that he was not given any treatment recommendations from the DOE Psychologist at the conclusion of the evaluation, the Individual has simply not begun the process of acknowledging and addressing his AUD diagnosis. In fact, he continues to consume alcohol at least a couple of times a week, often to excess, which the DOE Psychologist believes will compromise his judgment. The Individual did undergo ten hours of court-ordered group counseling for alcohol, and he did abstain from alcohol use for 6-12 months in 2012. However, there is no evidence of any more recent efforts to address his problematic alcohol consumption, or even any intention to do so.

While the last criminal incident involving alcohol consumption took place over a decade ago, I cannot conclude that the mitigating factor at (a) has been satisfied. As the Individual continues to consume alcohol despite his past legal entanglements and the AUD diagnosis, I cannot conclude that that the behavior, his problematic consumption, happened so long ago, was so infrequent, or

happened under such unusual circumstances that it is unlikely to recur. The Individual has not met the requirements of mitigating factor (a).

I have no information before me indicating that the Individual has recognized and sought counseling or treatment specifically for his problematic alcohol consumption or that he has modified or discontinued consuming alcohol altogether. Therefore, mitigating factors (b), (c), and (d) are not applicable.

D. Guideline I

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline I include:

- (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 amendable 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 recurrence 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 Guidelines at ¶ 29.

The behaviors alleged by the LSO to raise a concern under Guideline I, I find are not properly raised under this guideline. While "behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness" does present a concern per ¶ 28(a), the alleged behavior must not be "covered under any other guideline[.]" In this case, all of the alleged behavior is covered under other guidelines. The behavior alleged under Guideline I with respect to the Individual's alcohol consumption is covered under Guideline G, and further, the behavior he exhibited while in the employ of two previous employers is covered under Guidelines E and M.

Additionally, in neither her Report nor her testimony, the DOE Psychologist never indicated that any of the concerns she raised with respect to the Individual's behavior constitute a specific mental, emotional, or personality condition. Therefore, while the LSO has alleged specific behaviors that do raise security concerns, it has not presented "[a]n opinion by a duly qualified mental health

professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[]” as per the requirements of ¶ 28(b).

Because the LSO has not raised any other condition that gives rise to a security concern under ¶ 28, based on the foregoing, I conclude that Guideline I was improperly invoked.

E. Guideline M

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline M include:

- (a) So much time has elapsed since the 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 misuse was minor and done solely in the interest of organizational efficiency and effectiveness;
- (c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification to appropriate personnel; and
- (d) The misuse was due to improper or inadequate training or unclear instructions.

Adjudicative Guidelines at ¶ 41.

As the Individual’s behavior involving the improper use of technology began in 2019 and resulted in his termination in 2021, I cannot conclude that enough time has elapsed to mitigate the concern raised by his behavior. Further, the behavior occurred under very normal circumstances; namely, during the course of routine, daily employment. The Individual also did not provide any evidence indicating that he has sufficiently confronted and remedied the concerns that gave rise to this behavior, and instead, has indicated that his current employer provides enough work and opportunity for professional development to keep him sufficiently occupied, resulting in the prevention of such undesirable behavior. But this explanation does not provide sufficient assurance that the behavior is unlikely to recur, for example, if the Individual starts to become bored at work. Accordingly, I cannot conclude that the concerning behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. The Individual has not mitigated the stated concerns pursuant to mitigating factor (a).

The record is clear and the Individual admitted that he inappropriately used his personal computer on the CCTV network, in direct contravention of company policy, placing proprietary information at risk. Accordingly, I cannot conclude that the use was minor, and the misuse certainly was not done solely in the interest of organizational efficiency and effectiveness, as the record indicates that the Individual desired to conduct “personal business” on the computer, as well. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (b).

As the Individual admitted that the use of his personal computer in this manner was in direct violation of his employer's policies and there was no indication of any confusion over his understanding of applicable policy, I cannot conclude that the behavior was unintentional, inadvertent, or that there was improper or inadequate training or unclear instructions from his employer. The mitigating factors at (c) and (d) are not applicable.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines D, E, G, I, and M of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that while the Individual has brought forth sufficient evidence to resolve the Guideline D concerns and that Guideline I was improperly invoked, he has not brought forth sufficient evidence to resolve the Guideline E, G, and M security concerns set forth in the Notification Letter. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals