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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: July 12, 2023) Case No.: PSH-23-0105
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Issued: October 6, 2023

Administrative Judge Decision

Katie Quintana, Administrative Judge:

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

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In May 2022, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 10. In the section entitled “Police Record,” the Individual answered “no” in response to the question asking whether he had “**EVER** been charged with an offense involving alcohol or drugs.” *Id.* at 77 (emphasis in original). However, DOE discovered that, in April 2021, the Individual was arrested and charged with Use/Possession of Drug Paraphernalia and Felony Possession of Schedule I, II Controlled Substances less than 14 grams. Ex. 1, 7. Subsequently, the Individual underwent a psychological evaluation with a DOE consultant psychiatrist (DOE Psychiatrist) in April 2023. Ex. 8. After evaluating the Individual, the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate, and he determined that the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.* at 14.

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.

Due to unresolved security concerns, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline H (Drug Involvement) of the Adjudicative Guidelines. Ex. 2.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. *Id.* The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eleven numbered exhibits (Ex. 1–11) into the record and presented the testimony of the DOE Psychiatrist. The Individual submitted two exhibits (Ex. A–B) into the record, and he presented the testimony of four witnesses, including his own testimony.² The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SSC specifically cites Guidelines G, H, and E of the Adjudicative Guidelines. Ex. 1. Guideline G

² The Individual sought to submit an additional exhibit after the submission deadline had passed. As such, this third exhibit was not accepted into the record in this case, and I did not consider it in my decision.

relates to security risks arising from excessive alcohol consumption. “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. In citing Guideline G, the LSO relied upon the DOE Psychiatrist’s April 2023 determination that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) criteria for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 1 at 19. It additionally cited that, during the Individual’s evaluation with the DOE Psychiatrist, the Individual indicated that he had not consumed alcohol since May 2022; however, when the DOE Psychiatrist informed the Individual that he would be subject to laboratory testing in the form of a Phosphatidyl Ethanol (PEth) test, the Individual disclosed that he had consumed alcohol approximately once per month since his April 2021 arrest. *Id.* The LSO also cited the Individual’s PEth test results, which were positive at a level of 133 ng/mL, which the DOE Psychiatrist found was congruent with moderate to heavy alcohol consumption. *Id.* Lastly, the LSO cited the Individual’s disclosure in a February 2023 Letter of Interrogatory (LOI) that, on the day of the April 2021 arrest, he consumed six or seven alcoholic drinks, became intoxicated, and passed out at a slot machine. *Id.* at 20.

Guideline H relates to security risks arising from drug involvement and substance misuse. “The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs . . . 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. In citing Guideline H, the LSO relied upon the Individual’s April 2021 arrest and charge with Use/Possession of Drug Paraphernalia and Felony Possession of Schedule I, II Control Substances less than 14 grams. *Id.* at 20. The LSO additionally cited the criminal complaint, which indicated that the Individual “unlawfully [had] in his possession drug paraphernalia . . . a white powdery substance consistent with cocaine, with the intent to inject, ingest, inhale or otherwise introduce into the human body.” *Id.*

Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct “can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* In citing Guideline E, the LSO relied upon the Individual’s failure to disclose on the May 2022 QNSP that he had been arrested and charged with a drug offense in April 2021. *Id.* at 19. The LSO additionally cited that the Individual had failed to report his April 2021 arrest³ to DOE as required by DOE Order 472.2. *Id.*

IV. Findings of Fact

³ In addition to the drug related charge, the Individual was also charged with Trespassing in connection with the April 2021 arrest at the casino. Ex. 1 at 19.

As stated above, in April 2021, the Individual was arrested and charged with Trespassing and Use/Possession of Drug Paraphernalia. Ex. 7. There is nothing in the record indicating that the Individual reported this arrest to DOE. Further, in completing a May 2022 QNSP, the Individual answered “no” in response to the question as to whether he had “**EVER** been charged with an offense involving alcohol or drugs.” Ex. 10 at 77 (emphasis in original). On a February 2023 LOI, the Individual reported that, in April 2021, he had checked into a hotel room and went to the hotel casino where he “played slots” and consumed alcohol, when “before [he] realized it, [he] was intoxicated and fell asleep at a slot machine.” Ex. 6 at 12. He stated that he was unsure how much alcohol he consumed but estimated that he had been consuming alcohol for four hours. *Id.* The Individual stated that he did not buy or use any drugs prior to the arrest and asserted that the police told him that the hotel security was “notorious for treating people unfairly.” *Id.* at 14. He further stated that he does not use illegal drugs. *Id.* at 15. Regarding his alcohol use, the Individual stated that, as of the time he was responding to the February 2023 LOI, he “no longer consume[s] alcohol” and indicated that he last consumed alcohol in May 2022 when he consumed three drinks in approximately five hours. *Id.* at 13.

In April 2023, the Individual underwent a psychological evaluation with the DOE Psychiatrist, after which the DOE Psychiatrist issued a report of his findings (Report). Ex. 8. According to the Report, the Individual stated that, in April 2021, he was arrested at a casino after he “had too much alcohol to drink and passed out on a slot machine. *Id.* at 8. The Individual reported to the DOE Psychiatrist that he had consumed approximately six or seven mixed drinks prior to the arrest and denied that he had used or purchased drugs prior to the arrest. *Id.* The DOE Psychiatrist noted that the Individual argued that he had “never been charged with possession of drug paraphernalia . . . because it was never proven that he was using drugs and the drug related charge was later dismissed.” *Id.*

The Individual told the DOE Psychiatrist that he no longer consumes alcohol as his doctors had discovered that he had liver disease. *Id.* According to the Report, the Individual had suffered from liver problems since 2013 and had since been diagnosed with cirrhosis of the liver; however, the Individual denied that alcohol use caused his liver disease. *Id.* at 10–11. In addition to the liver problems, the DOE Psychiatrist noted that the Individual “reported a history of negative consequences to his alcohol use consisting of relationship conflicts, [a] DUI arrest, and current clearance status issues.” *Id.* at 9.

The Individual reported to the DOE Psychiatrist that he last consumed alcohol in May 2022 when he consumed approximately three drinks in five hours. *Id.* at 8. However, according to the Report, when the DOE Psychiatrist informed the Individual that he would be undergoing laboratory testing that would detect alcohol use in the preceding 30 days, the Individual stated that “he needed to update his previous statement regarding his last alcohol use.” *Id.* The Individual then told the DOE Psychiatrist that he “drank ‘randomly’ or approximately once per month since his arrest in 2021.” *Id.* He estimated that he last consumed alcohol two weeks prior to the evaluation. *Id.* The DOE Psychiatrist noted that, following the evaluation, the Individual left a voicemail stating that “he wanted to change his statement regarding his last alcohol use stating that he does not know when he last drank alcohol or how much.” *Id.* According to the Psychiatrist, the Individual stated, “It’s

not illegal to drink alcohol. If DOE is going to tell me I can't drink, that's unconstitutional." *Id.* at 9.

The DOE Psychiatrist noted that the established threshold for a positive PEth test is 20 ng/mL, and he reported that the Individual's PEth test was positive at a level of 113 ng/mL.⁴ *Id.* at 12. He stated that the positive PEth test indicated that the Individual was consuming more alcohol than he was reporting. *Id.* at 13. The DOE Psychiatrist also ordered a drug toxicology screen, which he indicated "was negative for common substances of abuse[,]” including cocaine. *Id.* at 12.

Ultimately, the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate Severity, without adequate evidence of rehabilitation or reformation. *Id.* at 14. In order to establish adequate evidence of rehabilitation or reformation, the DOE Psychiatrist recommended that the Individual enroll in an "intensive and highly structured alcohol recovery treatment program." such as an Intensive Outpatient Program (IOP), consisting of both individual and group therapy components. *Id.* at 14–15. Additionally, the DOE Psychiatrist recommended that the Individual attend "meetings of substance recovery activities on at least a three times per week basis for a minimum of 12 months." *Id.* at 14. He noted that this treatment should involve obtaining a sponsor and actively working on the steps of recovery. *Id.* The DOE Psychiatrist also recommended that the Individual "submit to PEth or other reliable screening for alcohol use in order to monitor abstinence[,]” which should be for a period of one year. *Id.*

A. Hearing Testimony

At the hearing, a nurse practitioner (PNP) from the Individual's worksite testified on his behalf. Tr. at 14–23. The PNP testified that she has known the Individual for approximately three years. *Id.* at 15. She testified that, in treating the Individual, she has never conducted any substance testing, nor has she ever prescribed any. *Id.* She stated that she became aware that the Individual's personal health providers diagnosed "problems with his liver" that required hospitalization; however, she was never "told of an actual diagnosis." *Id.* at 16, 22. The PNP testified that she was aware that the Individual's providers had advised him to decrease his alcohol consumption. *Id.* at 17. She stated that she provided the Individual with "general advice," including "what is considered acceptable alcohol use." *Id.* at 17. She also noted that the Individual indicated that he stopped consuming alcohol in approximately May 2023. *Id.* at 18. The PNP testified that the Individual has never arrived at the clinic with "any kind of alcohol substance on his breath or not been able to perform his job." *Id.* at 16.

The PNP testified that she feels that the Individual is "willing to discuss his downfalls and consider what he needs to do to improve[,]” a quality that she does not often see in her patients. *Id.* at 18–19. She felt that the characteristic that stands out the most regarding the Individual is his willingness to take responsibility for his behavior. *Id.* at 18. When asked to provide an example of how the Individual takes responsibility for his behavior, she stated that the Individual keeps his medication record updated. *Id.* at 22.

⁴ The DOE Psychiatrist noted that "in one small study[,]” 100 ng/mL "was the threshold that distinguished 'currently drinking' alcohol dependent subjects from people who 'did not drink.'" Ex. 8 at 12.

The Individual's daughter (Daughter) also testified on his behalf. *Id.* at 24–32. When asked whether she ever had concerns regarding the Individual's alcohol use, the Daughter stated, “[a] little, but I know we’ve talked about it and he’s wanted to quit for quite a while.” *Id.* at 24–25. She stated that she had talked to the Individual about her concerns regarding his alcohol consumption “at least a couple times a week” going back “a little less than a year.” *Id.* at 25. The Daughter noted that the Individual's son, who lived with him, also had concerns about the Individual's alcohol consumption. *Id.* at 26. She testified that she knew that the Individual had health problems related to his liver, and she believed those problems were attributable to alcohol. *Id.* at 27. The Daughter stated that the Individual stopped consuming alcohol approximately “four or five months ago.” *Id.* at 25. She testified that the Individual told her that it has been difficult for him to stop consuming alcohol as he wants to have a drink, “but he knows that he can’t have one.” *Id.* at 29.

The Individual's older brother (Brother) testified that the Individual did not tell him about the specific security concerns raised by the DOE, and he was unaware as to whether the Individual had ever had an encounter with law enforcement or involvement with drugs. *Id.* at 35–36; *see id.* at 71. The Brother stated that he was aware that the Individual consumed alcohol as they had consumed “a couple of beers together”; however, he stated that he had not consumed alcohol with the Individual in a number of years. *Id.* at 36–37. He testified that the Individual has not discussed with him any issues related to alcohol use, and he had never had concerns regarding the Individual's alcohol use. *Id.* at 38.

The Individual testified on his own behalf and began by discussing his arrest at the casino. *Id.* at 41. He stated that he felt cooped up in his house, so he decided to drive to the casino by himself to gamble. *Id.* The Individual testified, “I drank too much, and I guess, fell asleep. Next thing you know, security is harassing me.” *Id.* He stated that, when law enforcement arrived, the “police told [him] not to worry about – anything [be]cause . . . these guys are notorious for this.” *Id.* at 43. The Individual testified, “[t]hey said I had paraphernalia on me, which I don’t do drugs . . . and they had no actual – they didn’t do an alcohol blood test or anything. So there was no evidence of anything.” *Id.* at 44. When asked specifically about his possession of a white powder, consistent with cocaine, he stated, “I don’t know where that came from, but like I said, the police said that casino . . . security is notorious for messing with people.”⁵ *Id.*

The Individual explained that he did not report the arrest to DOE because law enforcement told him “it was nothing” and “when an officer tells you something, you try to believe him.” *Id.* at 43, 45. He acknowledged that failing to report the arrest to DOE was a mistake. *Id.* at 45. He stated that, in the future, he would “report whatever, anything, even if I stub my toe on a cop’s foot.” *Id.* Turning to his omission of the drug charge from his QNSP, the Individual stated that he did not know why he answered “no” when asked if he had ever been charged with an offense involving drugs or alcohol. *Id.* at 44–45.

The Individual testified that he never told the DOE Psychiatrist that he had been abstinent from alcohol for five months, but only that he had been “trying to quit” and had “cut back quite a bit.” *Id.* at 46. He then testified, “I actually called him back and said, ‘I can’t recall how much I’ve had

⁵ The Individual submitted a Declaration stating that he believed hotel security planted the drug “paraphernalia in [his] baggage.” Ex. B at 2.

to drink, but I have been trying to quit.” *Id.* The Individual stated that he was honest with the DOE Psychiatrist throughout the entire evaluation and only altered his reported alcohol consumption after he learned he would be undergoing the PEth test “because [he] wasn’t sure exactly how much” he had been consuming. *Id.* at 47–48. The Individual also denied telling the DOE Psychiatrist that it was unconstitutional for DOE to tell him that he could not consume alcohol. *Id.* at 70.

The Individual testified that he has “known for a while [he] should stop drinking[,]” but he was “[k]ind of” surprised by the level of alcohol consumption described in the Report as he “had been trying to . . . wean [him]self off, slowly.” *Id.* at 48. The Individual was unable to estimate how much he was drinking prior to the evaluation, but he stated that he was trying to “cut down” because of the concerns regarding his children, concerns for his health, and concerns regarding a younger brother with whom he would consume alcohol. *Id.* at 49–50. He explained that, approximately a year prior to the hearing, the Individual was diagnosed with a fatty liver,⁶ and his medical providers advised him to “cut way back or quit” consuming alcohol. *Id.* at 50. The Individual testified that although it was not easy for him to become abstinent from alcohol, he has. *Id.*

The Individual stated that he sought help from the Employee Assistance Program (EAP) but clarified that he had not completed a program as he was “just talking” with EAP. *Id.* at 52. He testified that he started seeing an EAP counselor “a couple months ago,” and he liked the EAP counselor he “talk[s] to now.” *Id.* at 58–59. He elaborated, stating, “I’ve been staying busy, and he’s been helping me with ways to stay busy and not, you know, drink.” *Id.* at 58. The Individual testified that he had participated in four meetings with the EAP counselor and had another meeting scheduled following the hearing. *Id.* at 60.

The Individual testified that he stopped consuming alcohol after he met with the DOE Psychiatrist because he realized “how bad [he] had been.” *Id.* at 53. When asked if he could remember when he last consumed alcohol, he stated, “I mean, I made – I made more of an effort, let’s just say that . . . since I met” the DOE Psychiatrist. *Id.* The Individual ultimately testified that he could not recall when he last consumed alcohol, and it is unclear from his testimony whether he stopped consuming alcohol before or after he met with the DOE Psychiatrist. *Id.* The Individual stated that, “a few days” before the hearing, he underwent a hair follicle test, but he had not yet received the results of the test.⁷ *Id.* at 54. When asked if he had completed any of the recommendations of the DOE Psychiatrist specified within the Report, the Individual stated, “[t]hat’s why I’m going to EAP and talking to them about it.” *Id.* at 58. The Individual testified that, although he looked into

⁶ The Individual asserted that a fatty liver is congruent with cirrhosis of the liver, which he stated was caused by medication that he was taking. Tr. at 50.

⁷ When asked whether he had any documentation to support his contention that he completed a hair follicle test, the Individual stated that he would “have to look for” it, and he stated that the laboratory indicated that the results would be returned in five to seven days. Tr. at 56. I informed the Individual that I would keep the record open for two weeks to allow him to submit those results; however, the only laboratory documentation the Individual submitted within that two-week deadline was a document entitled “Donor Pass,” which appears to be an order for hair follicle testing that expires on October 12, 2023. *Id.* at 80; Ex. A. In the email he sent containing the exhibit, the Individual asserted that the laboratory was unable to perform the hair follicle test as it “did not have enough of a sample.” *Id.*

an IOP, he did not enroll in one because “[i]t just seems a lot like they focus a lot on the drinking. And, to me, it’s not that, it’s more focusing on other ways to avoid it.” *Id.* at 61–62.

The DOE Psychiatrist testified after hearing all of the testimony presented at the hearing. The DOE Psychiatrist reaffirmed that, during the evaluation, the Individual initially stated he was no longer consuming alcohol but later revised this statement. *Id.* at 75. The DOE Psychiatrist went on to state that, following the evaluation, the Individual then called and revised the statement once more. *Id.* He stated that the Individual appeared to be taking positive steps toward rehabilitation and reformation in the form of “expressing a verbal interest in remaining sober,” meeting with a counselor, and “trying to be conscious of his alcohol use and . . . taking measures to try to avoid it.” *Id.* at 76. However, he also stated that the Individual’s “current recovery specific treatment . . . and the lack of engagement in that treatment” was not a positive step toward rehabilitation or reformation. *Id.* at 77. As such, the DOE Psychologist opined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns cited by the LSO under Guidelines E, G, or H of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

At the outset, I note that I am unable to fully trust the credibility of the Individual’s testimony. The record is replete with inconsistencies and mistruths put forward by the Individual. The Individual stated on his QNSP that he had never been charged with a drug or alcohol related offense when the Individual had been arrested for such an offense less than a year prior to completing the document. Further, when asked about the arrest during the psychological evaluation, the Individual continued to deny that he was ever charged with a drug offense. The Individual misrepresented his alcohol consumption on both the LOI and in his evaluation with the DOE Psychiatrist and subsequently changed his statement to the DOE Psychiatrist twice once he learned that he would be subjected to laboratory testing. During the hearing, the Individual asserted that he never made certain statements to the DOE Psychologist despite there being specific details and quotes within the Report that confirmed he made those statements.

A. Guideline E

Factors that may mitigate Guideline E security concerns include:

- a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

- b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- f) The information was unsubstantiated or from a source of questionable reliability; and,
- g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The Individual failed to report his April 2021 drug charge and arrest to DOE and made no effort to correct the omission. In fact, the Individual continued to conceal the incident by specifically denying that he had ever been charged with a drug offense when he completed the May 2022 QNSP. Further, when confronted with the charge during the psychological evaluation, the Individual continued to deny that he had been charged with the drug offense. As such, I cannot find that the Individual made a prompt, good-faith effort to correct the omission, concealment, or falsification. *Id.* at ¶ 17(a).

Furthermore, I cannot find that this offense was so minor or occurred under such circumstances that it is unlikely to recur. *Id.* at ¶17(c). The Individual twice concealed the charge and arrest from DOE, first in failing to report it and then, in denying it on the QNSP. Although the Individual acknowledged that he made a mistake in failing to report, *see id.* at ¶ 17(d), the Individual did not assure me that he takes the reporting requirements seriously. When asked how he would prevent a similar issue in the future, the Individual provided a flippant response, saying he would report “whatever,” including stubbing his toe. Tr. at 45.

Although the Individual testified that he failed to report the arrest to DOE because law enforcement informed him that he should not worry and “it was nothing,” the Individual has a responsibility as a clearance holder to know and understand the reporting requirements. A law enforcement officer cannot provide legal advice and is not a person with professional responsibilities for advising or instructing the Individual specifically concerning security processes. As such, I cannot find that the Individual has satisfied mitigating factor (b).⁸ *Id.* at ¶ 17(b). Ultimately, I cannot find that the Individual has adequately mitigated the Guideline E security concerns.

B. Guideline G

Conditions that may mitigate a Guideline G security concern 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol 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.

Id. at ¶ 23.

In this case, the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate, and provided a number of recommendations to the Individual in order for him to be able to establish rehabilitation and reformation. Although the Individual appears to acknowledge his maladaptive alcohol use and claims that he has been abstinent for a number of months, he has not provided sufficient evidence of actions taken to overcome this problem and has not demonstrated a clear and established pattern of modified alcohol consumption or abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(b). At the hearing, the Individual was not able to definitively state when he became abstinent from alcohol, stating only that, after seeing the DOE Psychiatrist, he “made more of an effort” to stop consuming alcohol. Tr. at 53. The Individual has not enrolled in an IOP, participated in a recovery program, or established a year of abstinence through laboratory testing. Although he claims to be working with an EAP counselor, there is nothing in the record to support his contention. As recognized by the DOE Psychiatrist, the

⁸ I do not analyze the applicability of mitigating factors (e), (f), or (g) as they are not relevant to the circumstances of this case. *Id.* at ¶ 17(e)–(g).

Individual appears to have a long history of negative consequences related to his alcohol use, and per his own admission, he has been aware for some time that he needed to address his problematic consumption. For this reason, and because he has yet to adequately address the issue, I cannot find that the Individual's problematic alcohol consumption occurred under such unusual circumstances that it is unlikely to recur or does not cast doubt on the Individual's current reliability, trustworthiness, or judgment. Adjudicative Guidelines at ¶ 23(a). Because the Individual is not participating in treatment program, I cannot find that mitigating factors (c) or (d) apply. *Id.* at ¶ 23(b)–(c). As such, I find that the Individual has not mitigated the Guideline G security concerns.

C. Guideline H

Factors that may mitigate a Guideline H security concern include:

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

Adjudicative Guidelines at ¶ 26.

Here, the Individual was arrested and charged with Use/Possession of Drug Paraphernalia. Ex. 7 at 4. The criminal complaint specifically states that the Individual had in his possession "a white powdery substance consistent with cocaine." *Id.* at 5. The Individual has not acknowledged his possession of the drugs; to the contrary, he claimed that he does not know the source of the drugs and believes the hotel security planted the drugs in his belongings. As such, I cannot find that he has satisfied mitigating factor (b). Adjudicative Guidelines at ¶ 26(b). Although the record is devoid of any evidence of a previous history with drug use, as I stated above, I am unable to fully

trust the credibility of the Individual's testimony, including his assertion that he did not know the source of the powder and it did not belong to him. Because the Individual has not submitted any evidence to support these contentions, I cannot find his use/possession of drug paraphernalia, as alleged in the criminal complaint, occurred under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. *Id.* at ¶ 26(a).⁹ As such, I cannot find that the Individual has mitigated the Guideline H security concerns.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guidelines E, G, or H. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

⁹ I do not analyze the applicability of mitigating factors (c) and (d) as they are not relevant to the circumstances of this case. *Id.* at ¶ 26(c)–(d).