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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 17, 2023	)	Case No.: PSH-23-0110
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Issued: November 7, 2023

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> 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 has a history of three arrests, two of which were alcohol-related. On September 10, 2022, police arrested and charged him with Driving Under the Influence (DUI).<sup>2</sup> Exhibit (Ex.) 10 at 1; Ex. 9 at 5. A blood test administered to him after this arrest indicated that he had a blood alcohol level (BAL) of .24 g/210L. Ex. 8 at 6; Ex. 16 at 3. On June 17, 2018, police arrested and charged the Individual with DUI. Ex. 11 at 2–4. A breath test administered to the Individual at the time of this arrest indicated that his BAL was .13 g/210L. Ex. 16 at 3. On June 31, 2018, police charged the Individual with Negligent Use of a Deadly Weapon (Discharge).<sup>3</sup> Ex. 12 at 1.

After his third arrest, a Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual. Ex. 15 at 17. The Individual submitted his response to the LOI on November 22, 2022. Ex. 15 at 17. In his responses to the LOI, the Individual admitted that his bail agreement arising from his September 10, 2022, DUI arrest required that he abstain from alcohol use. Ex. 15 at 14–

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<sup>1</sup> Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> The Individual pled “no contest” to this charge on February 23, 2023. Ex. 8 at 3.

<sup>3</sup> The Individual pled “no contest” to this charge on August 20, 2018. Ex. 12 at 3.

15. The Individual further admitted that he had violated the terms of this bail agreement by engaging in heavy alcohol consumption on October 11, 2022. Ex. 15 at 14–15. The Individual further stated that he no longer consumed alcohol and that his last use of alcohol occurred on October 11, 2022. Ex. 15 at 15–16. The Individual further reported that he had been prescribed Naltrexone for alcohol cravings. Ex. 15 at 16

After receiving the Individual’s response to the LOI, the LSO requested that he undergo an evaluation by a DOE-contracted psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on January 25, 2023. Ex. 16 at 1. In addition to conducting the CI, the Psychologist had him undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 16 at 2. The Individual’s PEth test result was negative, indicating that he had not recently used alcohol. Ex. 16 at 5. The Psychologist further noted that this negative PEth test result was “consistent with the negative findings in his random breath and urine tests” conducted by the [Individual’s employer’s Occupational Health Department (OM)].” Ex. 16 at 5.

The Psychologist reported that she had obtained the Individual’s treatment records from an intensive outpatient treatment program (IOP) that the Individual was attending at the time of the CI. Ex. 16 at 5. Those IOP records indicate that the Individual reported that he was consuming eight drinks a day. Ex. 16 at 31. These treatment records further indicated that the Individual was doing well in the IOP and was expected to complete it in the near future. Ex. 16 at 5. The Psychologist’s report also indicated that she had contacted the Individual’s case manager (Case Manager) at OM. 16 at 4. The Case Manager reported that she had received very positive comments about the Individual from his treatment providers at the IOP, who indicated the Individual was highly motivated and very honest. Ex. 16 at 4. The Psychologist noted that the Individual reported to her that he had stopped consuming alcohol after his September 10, 2022, DUI arrest, but then consumed alcohol again on October 11, 2022, despite being subject to frequent alcohol testing by his employer. Ex. 16 at 6. The Psychologist noted that the Individual “reported that incident to . . . OM, but it speaks to the difficulty [the Individual] has had controlling his drinking.” Ex. 16 at 6. The Psychologist further reported that, prior to attending the IOP, the Individual had attended a six-week education program conducted by a Licensed Professional Clinical Counselor (the LPCC). Ex. 16 at 6.

After considering all the information available to her, the Psychologist issued a report (the Report) on February 4, 2023, in which she concluded that the Individual met the criteria set forth in the Diagnostic and Statistical Manual 5-Text Revision (DSM-5-TR) for Alcohol Use Disorder, Severe (AUD) in Early Remission.<sup>4</sup> Ex. 16 at 6. The Psychologist further noted that the Individual “appears to be making good efforts toward rehabilitation, but as of this date, given the relatively brief period of abstinence he has, and the severity of his drinking, there is not yet adequate evidence of rehabilitation or reformation.”<sup>5</sup> Ex. 16 at 6. In order to treat his AUD, the Psychologist

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<sup>4</sup> The Psychologist found that the Individual met nine of the 11 criteria for AUD set forth in the DSM-5-TR. Ex. 16 at 6. Under the DSM-5-TR, the presence of six or more of the AUD criteria indicates that an individual’s AUD severity is “Severe.” Ex. 16 at 8.

<sup>5</sup> The Psychologist noted that the Individual readily acknowledged his history of heavy alcohol consumption and reported at least one incidence of alcoholic blackout. Ex. 16 at 6. The Case Manager reported that the Individual reported “symptoms of blackouts,” “drinking in the mornings to ease the symptoms of hangovers,” and “the complete

recommended that the Individual: complete his IOP; attend the IOP's Aftercare program for eight months; abstain from using alcohol for at least one year; attend three Alcoholics Anonymous (AA) meetings a week for one year; and participate in AA's Twelve-Step Program with a Sponsor for one year. Ex. 16 at 6–7.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him 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 submitted a response to the Notification Letter in which he requested a hearing. The LSO forwarded his response to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I heard testimony from three witnesses: the Individual, the LPCC, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-23-0110 (hereinafter cited as “Tr.”). The LSO submitted 19 exhibits, marked as Exhibits 1 through 19. The Individual submitted 12 exhibits, marked as Exhibits A1 through D3.

Exhibit A1 is a letter, dated June 12, 2023, to Whom It May Concern from the Case Manager indicating that the Individual had successfully completed his Fitness for Duty Evaluation. The letter indicates that, since October 5, 2022, the Individual had been “placed on routine alcohol testing.” Ex. A1 at 1. The letter further states: “All alcohol tests were negative and [the Individual] denied using alcohol for the remainder of his evaluation.” Ex. A1 at 1. The letter further indicated that the Individual had successfully completed the IOP on February 27, 2023. Ex. A1 at 1.

Exhibit A2 is a letter, dated June 13, 2023, to Whom It May Concern from the LPCC, indicating that the Individual had successfully completed a six-week Alcohol Education and Awareness class (AEAC). Ex. A 2 at 1. The letter also states that the Individual had been attending a 12-week Maintaining Changes in Substance Abuse class (MCSAC). The letter further states that the Individual “demonstrated excellent attendance, initiated conversations, participated, and appeared to benefit from the discussion and materials presented in class.” Ex. A2 at 1.

Exhibit A3 is a Certificate of Completion, dated July 27, 2023, for the 12-week MCSAC.

Exhibit A4 is a Certificate of Completion, dated December 8, 2022, for the AEAC.

Exhibit B1 is a Certificate of Completion, dated February 24, 2023, for the IOP.

Exhibit C1 is a laboratory report indicating that a PEth test specimen collected from the Individual on February 5, 2023, was invalid.

Exhibit C2 is a laboratory report indicating that a PEth test specimen collected from the Individual on August 3, 2023, was negative.

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lack of memory on the morning of his arrest.” Ex. 16 at 4. The Case Manager further reported that the Individual “was an outlier in the range of severity of alcohol use seen at OM—“a more acute case”— and it was determined it would be in his best interest to begin treatment as soon as possible.” Ex. 16 at 4.

Exhibit C3 is a letter from a certified nurse practitioner reporting that a PEth test specimen collected from the Individual on August 29, 2023, “was incorrect and not resulted.”

Exhibit C4 is a laboratory report indicating that a PEth test specimen collected from the Individual on September 21, 2023, was negative.

Exhibit D1 is a Case Docket from a state court indicating that Individual received a suspended sentence of 5 months and 30 days and a fine of \$250 after pleading No Contest to the Negligent Use of a Deadly Weapon (Discharge) charge.

Exhibit D2 is a Nolle Prosequi, dated October 10, 2018, issued by an Assistant District Attorney dismissing an unknown case filed against the Individual without prejudice.

Exhibit D3 is a Notice of Appeal Filed by the Individual on March 7, 2023, in a criminal proceeding in which the Individual had entered a “GUILTY PLEA CONDITIONED ON THE RIGHT TO APPEAL VERDICT/FINAL ORDER” on February 23, 2023. It is not clear whether this document pertains to the September 10, 2022, DUI charge or the No Contest to the Negligent Use of a Deadly Weapon Charge.

The Individual also submitted test results from urine testing of the Individual conducted by OM as part of the Fitness for Duty Program (FDP) with his hearing request. These test results appear in the Record as DOE’s Exhibit 2. These test results indicate that urine samples submitted by the Individual on October 24, 2022; November 14, 2022; November 21, 2022; November 28, 2022; December 5, 2022; December 14, 2022; December 19, 2022; January 12, 2023; January 23, 2023; January 30, 2023; February 9, 2023; February 16, 2023; and February 23, 2023, each tested negative for alcohol use.

## **II. The Notification Letter and the Associated Security Concerns**

The Summary of Security Concerns (SSC) attached to the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guidelines G (Alcohol Consumption), and J (Criminal Activity) of the Adjudicative Guidelines.

Under Guideline G, the LSO cites the Individual’s two DUI arrests, his use of alcohol in violation of the terms of his bail agreement, and the Psychologist’s conclusion that the Individual meets the DSM-5-TR’s criteria for AUD, Severe. This information adequately justifies the LSO’s invocation of Guideline G. Under Guideline G, “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work, such as driving while under the influence, fighting, . . . disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder;” a “diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol disorder;” and “failure to

follow any court order regarding alcohol . . . abstinence.” Adjudicative Guidelines at ¶ 22(a), (d), and (g).

Under Guideline J, the LSO cites the Individual’s two DUI arrests, his arrest for Negligent Use of a Deadly Weapon (Discharge), and his use of alcohol in violation of the terms of his bail agreement. These allegations adequately justify the LSO’s invocation of Guideline J. The Adjudicative Guidelines state: “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” Adjudicative Guidelines at ¶ 31(b).

### **III. Regulatory Standards**

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

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. Hearing Testimony**

At the hearing, the LPCC testified on the Individual’s behalf. She testified that she had provided the Individual with individual counseling and taught the AAEC and MCSAC attended by the Individual. Tr. at 10, 13. The Individual has received individual counseling from her for personal and alcohol issues on five occasions since August 27, 2020. Tr. at 11. On October 6, 2022, as a result of a DUI, the Individual was referred to the FDP and began attending the AEAC, which he completed on December 8, 2022. Tr. at 12. The Individual began attending the MCSAC on March 29, 2023, and completed it on July 27, 2023. Tr. at 12–13. The LPCC reported that the Individual has always been attentive and focused when attending these classes and has been open with his classmates. Tr. at 17. The LPCC testified that the Individual informed her that his sobriety date

is October 11, 2022. Tr. at 18. She is aware that the Individual had attended the IOP. Tr. at 19. The Individual has expressed his intention to abstain from alcohol use to her. Tr. at 20. She testified that the Individual knows he can reach out to the Employee Assistance Program (EAP) or his primary care physician if he were to experience cravings for alcohol. Tr. at 20. The Individual is no longer attending the AAEC or MCSAC. Tr. at 21. When the LPCC was asked about “her confidence level for the Individual’s continuing sobriety she stated:

I would -- you know I don't know all of the details because I have not done individual work with him for a long period of time. I would recommend, you know, that he maintain his sobriety and his abstinence. He did express that he does not want to drink anymore, at all, and that he knows now that he can reach out to the EAP and a primary care physician if he finds that he is starting to slip or has cravings. And I would recommend that he, you know, continue the [MCSAC], if he would like to, to come back at any time, and any of the resources that he has established outside of [his employer]. And any recommendations of the Fitness for Duty psychologist and/or case manager, . . . recommended, because . . . the Fitness for Duty case manager/social worker, she also plays a role in recommendations, I just don't know what they are.

Tr. at 19–20.

The Individual testified that, right after he was released from police custody, he reported his September 10, 2022, DUI arrest to his employer who instructed him to contact the FDP at OM. Tr. at 25. The FDP required him to abstain from alcohol use, take weekly drug and alcohol tests, and attend the AAEC and MCSAC. Tr. at 25–27. The Individual testified that he stopped using alcohol after the September 10, 2023, DUI until October 11, 2022, when he consumed alcohol. Tr. at 29. The Individual testified that his last use of alcohol occurred on October 11, 2022. Tr. at 33. The Individual opined that he had a “medium level” alcohol problem but does not believe that he currently has an alcohol problem. Tr. at 32, 57. He recognizes that alcohol has caused him problems in the past. Tr. at 44. The Individual testified that now that he is sober, he feels happier and healthier, has lost weight, and gained strength, stamina, and energy. Tr. at 35, 44–45. He further testified that exercise helps him remain sober. Tr. at 34. The Individual testified that he has no urges or desires to use alcohol and that, as time goes by, he finds it easier to abstain from using alcohol. Tr. at 35–36, 53. He further claimed that he has lost interest in alcohol. Tr. at 42. The Individual testified that he intends to permanently abstain from alcohol use. Tr. at 44, 57. The Individual testified that the laboratory he used for his PEth tests mishandled his blood samples which caused the test to be invalidated on two occasions. Tr. at 45–46. His last PEth test occurred on September 21, 2023. Tr. at 46. The Individual did not attend any Aftercare program. Tr. at 58. The Individual tried attending a few AA meetings but did not find them to be helpful. Tr. at 48–49, 57. He has no plans for further treatment, testifying that he is tired of talking about alcohol. Tr. at 49. He did not form friendships with any of the other participants in the AAEC, MCSAC, or IOP. Tr. at 39. He does not keep alcohol in his home. Tr. at 43.

The Individual testified that his Negligent Use of a Deadly Weapon conviction “sounds so much worse than what it actually is.” Tr. at 53. According to the Individual’s testimony, he was at home in his yard shooting towards a mountain when police arrived. Tr. at 54. He testified that he had

been shooting too close to his house. Tr. at 54. He claimed he was not arrested, but rather, received “a citation and that was pretty much it.” Tr. at 54. He testified that he paid a fine and received 90 days of probation for this offence. Tr. at 55. He claimed that alcohol was not involved in this incident. Tr. at 54.

The Psychologist testified at the hearing after observing the testimony of the LPCC and the Individual. She testified that, if the Individual has abstained from alcohol for a full year as he claims, his AUD would be in “sustained remission” and that he would have demonstrated “adequate rehabilitation and reformation.” Tr. at 64–66. She testified that she is concerned about the Individual’s failure to attend Aftercare, as she had recommended. Tr. at 64. She further expressed her concern that the Individual’s sobriety was not sufficiently verified, since he only had three valid PEth tests to document his abstinence from alcohol during the past year. Tr. at 63–64. She also expressed her concern that his “history with alcohol is significant.” Tr. at 68.

## **V. Analysis**

### **A. Guideline G**

In assessing whether the Individual has mitigated the security concerns arising from his two DUI arrests, his AUD diagnosis, and his use of alcohol in violation of the terms of his bail agreement, I must consider the credibility of his testimony that his last use of alcohol occurred on October 11, 2022. I note that this testimony is partially corroborated by objective evidence in the record. The record includes five PEth test results from blood samples collected from the Individual. Each of the samples obtained from the Individual on January 23, 2023, August 3, 2023, and September 21, 2023, were negative. The samples obtained from the Individual on February 5, 2023, and August 29, 2023, were invalidated due to laboratory error. However, I find that the Individual’s willingness to undergo these two inconclusive PEth tests is evidence of his expectation that they would be negative, therefore providing some corroboration of the Individual’s testimony that he has remained sober for the approximately one-month periods preceding February 5, 2023, and August 29, 2023. The record also includes the results of 13 urine samples collected from the Individual between October 24, 2022, and February 23, 2023, each of which tested negative for alcohol use, thereby corroborating the Individual’s claim of sobriety for the period beginning on October 11, 2022, and concluding on February 23, 2023. Accordingly, the laboratory test results submitted by the Individual provide objective evidence that the Individual abstained from alcohol use from October 11, 2022, to February 23, 2023, and from July 1, 2023, to the hearing.<sup>6</sup> However, the Individual’s assertion that he abstained from alcohol use since October 11, 2022, is uncorroborated for the four-month period from March 2023 through June 2023.<sup>7</sup> Other than his test reports, the Individual offered no other evidence corroborating his testimony that he has abstained from alcohol use during the period from March 2023 through June 2023. Since I did not

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<sup>6</sup> Based on the assumption that a negative PEth test result is evidence that the Individual did not consume alcohol during the previous month.

<sup>7</sup> Unexplained intervals in tests results raise concerns about the possibility that positive tests results have been omitted from the record or that the Individual refrained from being tested because of an expectation of positive test results. Of course, it is possible that other, more innocent reasons may exist for unexplained intervals in test results. In the present case, no such explanation by the Individual has been provided.

find the Individual's testimony sufficiently credible to convince me that he has abstained from alcohol use since October 11, 2022, I find that the Individual has only shown that he has been sober since the beginning of July 2023, a period of four months.

Moreover, the Individual's testimony indicates that he has declined to participate in any Aftercare program, a standard practice for graduates of IOPs, that was specifically recommended by the Psychologist.<sup>8</sup> Nor has the Individual become involved in AA and worked the AA's Twelve-Step Program as recommended by the Psychologist. In fact, the Individual has not been engaged in any organized sobriety support activities or therapy since July 27, 2023, when he completed the MCSAC.<sup>9</sup> Moreover, the Individual testified that he has not developed any friendships with sober peers. Building a sobriety support network is customarily highly encouraged by IOPs and the Individual's failure to do so brings into question either his commitment to his long-term sobriety or his understanding of the challenges he faces in maintaining his sobriety over the long haul. I am concerned that without the continuing support of professionals or other individuals maintaining their sobriety, the Individual may not be able to maintain his sobriety.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G. First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show "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." Adjudicative Guidelines at ¶ 23(a). In the present case, the Individual has only shown that he has abstained from alcohol use for four months which is not a sufficient period to demonstrate that his AUD has been resolved and that his alcohol consumption is unlikely to recur, especially in light of his decision to forego Aftercare, AA, or continuing participation in the MCSAC. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(a).

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if "[t]he 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." Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged has AUD and has provided evidence of actions taken to overcome this problem. However, a four-month period of abstinence is not sufficient for the Individual to have demonstrated a clear and established pattern of abstinence from alcohol. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(b).

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if "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

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<sup>8</sup> The Individual did testify that he attended the MCSAC as a replacement for an Aftercare program. Tr. at 58. He claimed that his IOP did not offer Aftercare. Tr. at 58. The Psychologist had recommended that he attend Aftercare for at least eight months. The MCSAC was a 12-week program.

<sup>9</sup> I note that even though he was welcome to continue attending MCSAC meetings, and was encouraged by the LPCC to do so, he testified that he discontinued attending the MCSAC after July 27, 2023, because it would be too difficult for him to get away from his work to do so. Tr. at 49–50.



program.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual is no longer participating in counseling or a treatment program to address his AUD, as recommended by the Psychologist and the LPCC. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(c).

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). As noted above, while the Individual has successfully completed the IOP, he has not participated in Aftercare, and he has stopped attending the MCSAC after three months, despite the Psychologist’s recommendation that he attend Aftercare for at least eight months. Moreover, he has not yet sufficiently established a pattern of abstinence from alcohol, given that he has only shown that he been abstaining from alcohol use for four months. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(d).

I therefore find that the security concerns raised by the LSO under Guideline G have not been resolved.

## **B. Guideline J**

Some of the Individual’s criminal activity is clearly symptomatic of his AUD, specifically his two DUIs and his use of alcohol in violation of the terms of his bail agreement. Because the Individual has not yet shown that his recovery from his AUD can be sustained, I remain concerned that there is an unacceptable risk that the Individual will engage in future alcohol-related criminal activity. One instance of the Individual’s criminal activity is not related to his AUD, specifically his Negligent Use of a Deadly Weapon Charge (Discharge) conviction.<sup>10</sup>

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns arising under Guideline J, two of which are relevant to the present case.<sup>11</sup> First, an individual may mitigate security concerns under Guideline J if they can show that “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” Adjudicative Guidelines at ¶ 32(a). In the present case, the Individual has not yet shown that the conditions which are the root causes of his alcohol-related criminal activity are permanently resolved, therefore I cannot find that his alcohol-related criminal activity is unlikely to recur.

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<sup>10</sup> While the Individual testified that he paid a fine and received 90 days probation for this offence, the Record indicates that he received a suspended sentence of 5 months and 30 days and a fine of \$250 for this offence. Tr. at 55; Ex. D1.

<sup>11</sup> Two of the conditions do not apply to the present case. Adjudicative Guideline ¶ 32(b) provides for mitigation when an individual can show that they were “pressured or coerced into committing the act and those pressures are no longer present in the person’s life.” Adjudicative Guidelines at ¶ 32(b). In the present case, the Individual does not contend that he was pressured or coerced into engaging in his criminal activity. Adjudicative Guidelines ¶ 32(c) provides for mitigation when an individual is able to show that no reliable evidence shows that they engaged in the alleged criminal activity. In the present case, the Individual does not deny the criminal activity cited in the SSC.

Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 32(a). However, there is no evidence in the record indicating that the Individual has engaged in non-alcohol-related criminal activity since 2018. I am therefore convinced that since so much time has elapsed since he has engaged in non-alcohol-related criminal behavior and since there is only one instance of non-alcohol related criminal activity in the record, his non-alcoholic criminal activity happened under such unusual circumstances that it is unlikely to recur.

Second, an individual may also mitigate security concerns under Guideline J if “[t]here is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.” Adjudicative Guidelines at ¶ 32(d). In the present case, rehabilitation from the Individual’s alcohol-related criminal activity would need to be in the form of rehabilitation from the Individual’s AUD. As discussed above, the Individual has not yet shown that he is rehabilitated from this disorder. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 32(d) are present. I note, however, that the passage of five years with any recurrence of the Individual’s non-alcohol-related criminal activity has mitigated the security concerns raised by his Negligent Use of a Deadly Weapon Charge (Discharge) conviction.

I therefore find that the security concerns raised under Guideline J by the Individual’s criminal activity have not been resolved.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guidelines G and J. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals