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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: August 15, 2023) Case No.: PSH-23-0121
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Issued: January 16, 2024

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 her to hold a security clearance. In late January 2023, the Individual was arrested and charged with Aggravated Driving While Intoxicated (DWI) and Open Container. Exhibit (Ex.) 7. The Individual subsequently completed a Letter of Interrogatory (LOI) and admitted that, prior to the arrest, she had consumed “a few drinks of tequila and a couple of beers.” Ex. 9 at 39.² In May 2023, the Individual was evaluated by a DOE consultant psychologist (DOE Psychologist) who diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission and opined that the Individual had not shown adequate evidence of rehabilitation or reformation. Ex. 10 at 56.

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

² The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

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 her 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 G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised her 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 twelve numbered exhibits (Ex. 1–12) into the record and presented the testimony of the DOE Psychologist. The Individual submitted thirteen exhibits (Ex. A–M) into the record, and she presented the testimony of four witnesses, including her own testimony. 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 her 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 Guideline G and Guideline J of the Adjudicative Guidelines. Ex. 1. Guideline G 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 Psychologist's May 2023 determination that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) criteria for Alcohol Use Disorder, Moderate, in Early Remission. Ex. 1 at 5. It additionally cited the DOE Psychologist's determination that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id.* The LSO also cited the Individual's January 2023 arrest and charge for Aggravated DWI and Open Container with a Breath Alcohol Content (BAC) of "0.21 and 0.22." *Id.* It additionally cited the Individual's admission in the LOI that she had consumed "a few drinks of tequila and a couple of beers" prior to the arrest. *Id.*

Guideline J addresses criminal conduct. Adjudicative Guidelines at ¶ 30. Such conduct "creates doubt about a person's judgment, reliability, and trustworthiness" as "[b]y its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." *Id.* In citing Guideline J, the LSO relied upon the January 2023 arrest and charge of Aggravated DWI and Open Container. *Id.*

IV. Findings of Fact

In March 2023 and April 2023, the Individual completed two LOIs detailing the circumstances surrounding the January 2023 DWI. Ex. 8; Ex. 9. She stated that on the day of her arrest, she was at home with her daughter, who was then a baby, and she "had a couple of drinks." Ex. 8 at 35; Ex. 9 at 39. She explained that her daughter's father, with whom she had been arguing, arrived at her house, and she went to take a nap as she did not want to engage with him any further. Ex. 9 at 39. The Individual stated that, when she woke up, her daughter and the daughter's father were gone, and she was unable to get in touch with him. *Id.* She explained that while she was trying to reach the daughter's father, she had "another drink, and in a frenzy without thinking [she] got behind the wheel and drove to his house." *Id.* at 39. She stated that she "proceeded to call and wait for him [at his house] in [her] vehicle until he arrived." *Id.*

The Individual stated that law enforcement then arrived at the daughter's father's house, performed a sobriety test, and arrested her. *Id.* Although the Individual was "not entirely sure" how much alcohol she had consumed, she estimated that she had "a few drinks of tequila and a couple of beers." *Id.* She stated that she was charged with Open Container in addition to the DWI because she had a beer in her vehicle, which she had consumed "while [she] was at home and [she] left it in [her] vehicle when [she] left [her] house." *Id.* at 40.

The Individual explained that she believed that alcohol had a negative impact on her emotional health. *Id.* at 44. She elaborated, stating that she suffered from postpartum depression after the birth of her daughter; she "lost [a] relationship of 6 years"; and within a month of her daughter's birth, her grandmother passed away. Ex. 8 at 35. She explained that she was a single mom of a newborn, and she had "a lot on [her] p[l]ate." *Id.* She stated: "If I did consume alcohol, I would notice at times my emotional well-being was even more strained. If I consumed to self-medicate because I was overwhelmed, it was a lot worse." *Id.*

The Individual stated that at the time she completed the March 2023 LOI, she was not consuming alcohol, and she stopped consuming alcohol "right after" she was arrested as she realized that she

could have hurt someone or had her “kids taken away.” Ex. 9 at 42. However, she also stated that she last consumed alcohol on February 15, 2023, when she consumed “some beer” while out of town to watch a professional basketball game. *Id.* at 43. Then, on the following page of the LOI, the Individual reported that she consumed “quite a bit of alcohol, six beers throughout the day and had two shots of tequila at the basketball game.” *Id.* at 44. She stated that she felt that this level of consumption was “moderate.” *Id.* Regarding her future intentions for alcohol, the Individual stated that she does not intend to consume alcohol on a “regular[] basis or on a social basis.” *Id.* at 45. She explained that “[i]f abstaining from alcohol keeps [her daughters] under [her] care, [she] will happily do so.” *Id.* She stated that she does not believe that she has “an alcohol related issue,” but she is “more than happy to abstain completely.” *Id.*

In May 2023, the Individual underwent a psychological evaluation with the DOE Psychologist, after which the DOE Psychologist issued a report of her findings (Report).³ Ex. 10. During the evaluation, the Individual explained to the DOE Psychologist that her daughter’s father left her when she was six months pregnant; she explained that this “contributed to stress and sadness for her.” *Id.* at 51. After her baby was born, “she resumed drinking ‘to block everything out’” and “‘numb’ herself from depression and anxiety.” *Id.* at 53–54. The Individual told the DOE Psychologist that she sought counseling and received medication for her postpartum depression, but she “continued to drink, and drank more frequently, often to intoxication.” *Id.* at 53. She stated that she “now sees how drinking worsened her emotional condition.” *Id.* at 54.

During the evaluation, the Individual told the DOE Psychologist that on the day of the DWI, she did not feel intoxicated. *Id.* at 52. The DOE Psychologist opined that this was an indicator that the Individual “had possibly developed a tolerance to alcohol which occurs with regular, heavy consumption.” *Id.* at 54. She further noted that it was “possible, even likely, that [the Individual] under-reported the frequency and/or quantity of her drinking over the past year . . . particularly given the very high BAC . . . at the time of her DWI.”⁴ *Id.* The DOE Psychologist stated that the Individual was either “not recalling that she drank much more than she reported, or she is minimalizing the amount.” *Id.* at 56. She also opined that the Individual showed “ambivalence about accurate reporting.”⁵ *Id.*

The DOE Psychologist additionally noted that the Individual’s intentions towards alcohol “have varied over time.” *Id.* at 54. Despite noting on the LOI that she intended to abstain from alcohol,

³ As part of the evaluation, the DOE Psychologist ordered a Phosphatidylethanol (PEth) test, which the DOE Psychologist noted “detects any significant alcohol use over the past three to four weeks.” Ex. 10 at 55. The Individual’s PEth test was negative, which provided “medical evidence that she ha[d] not been drinking on a regular, heavy basis within a few weeks of the test, and ha[d] not ha[d] binge drinking episodes or moderate drinking within about one week of the test.” *Id.*

⁴ The DOE Psychologist estimated that three hours before the breath test was taken, the Individual’s BAC would have been over three times the legal level of intoxication.” Ex. 10 at 52. She noted that, at this level, “most people experience a blackout, and will have impaired balance, difficulty walking, vomiting, loss of good judgment, and impaired muscle coordination and driving skills.” *Id.* at 56.

⁵ In offering this opinion, the DOE Psychologist cited to the Individual’s statement that she consumed “quite a bit . . . but moderately” while out of town for the basketball game, which the DOE Psychologist noted to be contradictory. Ex. 10 at 56.

during the evaluation, the Individual stated that she “thought it would be a lie if she said that she would not ever drink.” *Id.* at 53. However, the DOE Psychologist noted that the Individual reiterated that “for the sake of her children and her own ‘emotional state . . . [she] want[s] a better relationship with alcohol.” *Id.* According to the DOE Psychologist, the Individual stated, “I work, I come home, I take care of my kids, if I want a couple of beers, it’s nobody’s business!” *Id.*

According to the Report, as a result of her arrest, the Individual was placed into a Fitness for Duty Evaluation, through her employer, which required that she abstain from alcohol, undergo random alcohol testing, and attend a six-week Alcohol Awareness and Education class. *Id.* at 52. The Individual reported to the DOE Psychologist that although she completed the class, she did not enjoy it, “but it did teach her a lot about alcohol and its effects.” *Id.*

Ultimately, the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission, without adequate evidence of rehabilitation or reformation. *Id.* at 56. In order to establish adequate evidence of rehabilitation, the DOE Psychologist recommended that the Individual attend “treatment which addresses alcohol consumption.” *Id.* She stated that this could be either weekly individual and group sessions with a therapist who specializes in substance use treatment or attendance at Alcoholic Anonymous (AA). *Id.* She noted that either of these treatments should continue for a period of nine months. *Id.* The DOE Psychologist additionally recommended PEth testing every four to six weeks. *Id.* Should the Individual choose to establish reformation rather than rehabilitation, the DOE Psychologist recommended that she remain abstinent from alcohol for twelve months, undergoing PEth tests as laboratory proof of abstinence. *Id.*

V. Hearing Testimony

At the hearing, two of the Individual’s supervisors testified on her behalf. Tr. at 13–20; 21–29. The supervisors stated that they have never had any alcohol related concerns about the Individual regarding her performance at work. *Id.* at 15; 25. One supervisor stated that the Individual is an “outstanding employee,” and he had no concerns regarding her honesty, reliability, or judgment. *Id.* at 15, 17. The other stated that the Individual is a “valuable employee” who has “always done well.” *Id.* at 29.

One of the Individual’s friends (Friend) also testified on her behalf. *Id.* at 32–39. She stated that she has known the Individual for ten years and serves as the godmother to one of her daughters. *Id.* at 32–33. She stated that she did not know “the specifics of exactly what happened” on the night of the DWI, but the Individual told her that she was seeking counseling and “working toward the recommendations that were given to her.” *Id.* at 34. The Friend stated that she was surprised when she learned of the Individual’s DWI as “she’s not the kind of person who is careless like that in normal circumstances.” *Id.* at 35. She stated that she has never had concerns about the Individual’s alcohol use. *Id.* The Friend testified that she felt that the Individual had “learned a lot through this situation and what’s happened[,] and . . . I know that she deeply regrets it.” *Id.* at 38.

The Individual’s half-brother (Brother) testified. *Id.* at 42–54. He stated that although he only sees the Individual on special occasions, they talk on the phone approximately one to two times per month. *Id.* at 42–43. The Brother stated that he was “shocked” when he learned of the Individual’s

DWI as he feels that she “has really good judgment.” *Id.* at 44. He stated that he has “never felt that [the Individual has] had an issue with alcohol.” *Id.* at 45. The Brother indicated that the Individual used to be a “social drinker,” but now, “her drinking is nonexistent.” *Id.* He elaborated, stating that the Individual is “terrified” of alcohol, so she no longer consumes it. *Id.* at 48. He noted that she “has a lot of regret in her.” *Id.* The Brother added that the Individual is “really disciplined . . . so . . . I don’t see herself putting her [sic] in a situation like this ever again.” *Id.* at 52.

The Individual testified that on the day of the DWI, she had also been arguing with her daughter’s father, which put her in “an emotional coma.” *Id.* at 74–75. The Individual explained:

[W]e continued to argue and argue, and just one thing led from another. I just – I decided I wanted to have a drink early in the day, and I had my daughter with me. He showed up to my house unexpected, and I told him I did not want to argue. I went to lay in my bed. I took a nap. When I woke up, my daughter was gone I’m the primary custody holder. I take care of my daughter 100 percent of the time. So he’s – he’s not supposed to take her . . . [a]nd he took her, and it put me in an emotional frenzy. Like I could not get ahold of him, he would not answer his phone, he would not respond back to me. And I decided to get up and leave.

Id. at 75. The Individual noted that she had “obviously” consumed more than one drink that day, but she stated that she could not provide “an appropriate answer” as to the amount because she could not remember how much she had consumed because she was in “an emotional state.” *Id.* at 76. She estimated that she likely had “about five or six” drinks,⁶ “[m]aybe more.” *Id.*

The Individual testified that the DWI charge was dismissed, and she was required to have an interlock device in her vehicle for six months.⁷ *Id.* at 71. She indicated that “being in trouble, being in jail” is the event that prompted change. *Id.* She stated that she “struggle[s] with . . . [her] emotional state at times,” and she was “using alcohol as a coping mechanism” for the challenges in her life. *Id.* at 63, 66. She stated that she has sought out help from a counselor (Counselor),⁸ and at the time of the hearing, she was meeting with the Counselor once a week.⁹ *Id.* at 57. She noted

⁶ The Individual noted that she had both liquor and beer. Tr. at 76. She stated that she believes she had “a couple beers . . . before [she] left in [her] vehicle . . . and [she] left [the beer] in [her] vehicle” while trying to decide “what to do[,]” which resulted in the Open Container charge. *Id.*

⁷ The Individual submitted a Notice of Declination to Prosecute as well as her interlock records from June to November 2023, which indicate that she has always passed the BAC tests. Ex. E; Ex. K.

⁸ The Individual noted that although she only began working with the Counselor in June 2023, she had a previous relationship with the Counselor as they worked together when the Individual was pregnant and after she had her daughter. Tr. at 69; 81. The Individual explained that she had stopped seeing the Counselor around mid-2022 because the Counselor left to complete an internship; however, she sought out the Counselor in early 2023 and resumed counseling once the Counselor returned from her internship. *Id.* at 81, 83.

⁹ The Individual submitted a letter from the Counselor into the record. Ex. L. The Counselor noted that the Individual began counseling services in late June 2023, and as of mid-November 2023, the Individual was still attending weekly sessions. *Id.* The Counselor stated that the Individual participates fully in each session, and she has “observed [the Individual] working consistently to implement . . . healthy changes into her life as a result of her time in and

that she did not think that the Counselor specialized in substance use treatment, but she stated that she and the Counselor discuss “alcohol consumption and the abuse of using alcohol.”¹⁰ *Id.* at 58. She stated that she speaks to the Counselor mostly about her stressors and her emotions because she feels that her emotions “are out of control at times.” *Id.* In working with the Counselor, she has learned “some new coping mechanisms to help [her] deal with things, instead of being under stressors and relying on alcohol.” *Id.* at 57, 66. She noted that meditation and reading were two of her new coping mechanisms. *Id.* at 66. She also stated that she has gone back to school, and now, she is “engrossed with work and school, and her kids.” *Id.* at 63.

In responding to how she would now handle the situation with her daughter’s father, she stated that she would call the police or call someone to come get her. *Id.* at 87. She elaborated, stating:

Maybe I just needed a break. Maybe I should have just not even bothered at all. I was just – I get – I get a little bit overwhelmed with my kids sometimes, just because it’s a lot, and I don’t feel like the appropriate thing to do is to hand them off to other people. It’s – especially now going through all this, I realize I need more time to myself than I get[,] . . . but I don’t feel like burdening others with my choices or my issues.

Id. at 88. When asked about her support system, the Individual responded, “[m]e, myself, and I, and seeking a therapist.” *Id.*

The Individual testified that she had not consumed alcohol since February 15, 2023. Since then, she has undergone three PEth tests, all of which were negative.¹¹ *Id.* at 60, 80; Ex. F; Ex. G; Ex. M. Regarding her future intentions toward alcohol, the Individual testified that she does not “care to drink right now or for however long.” *Id.* at 62. However, she stated that she could not say that “if [she] goes to a social event[, she is] not going to have a drink to be social when [she is] not around [her] children. But as far as right now, [she does not] have any consideration to have any kind of alcohol whatsoever.” *Id.* She then stated that her plan was to abstain from consuming alcohol in the future. *Id.*

The DOE Psychologist testified after hearing the testimony presented. She explained that she gave the Individual the “in early remission specifier” because, at the time she performed her evaluation,

commitment to the therapeutic process.” *Id.* The Counselor added that she has “observed no signs of substance use,” and the Individual reported to her that she has maintained sobriety since the January 2023 arrest. *Id.*

¹⁰ The DOE Psychologist testified that she spoke with the Counselor, who indicated that she and the Individual had talked about alcohol “maybe twice after [the Individual] brought it up following drinking too much over a weekend.” Tr. at 93. The DOE Psychologist expressed concern as to whether the consumption occurred when the Individual was seeing the Counselor in 2021 and 2022 or whether the consumption occurred after the DWI; however, she noted that she did not clarify this with the Counselor. *Id.* Given the Counselor’s letter indicating that the Individual reported maintaining sobriety since January 2023, I am inclined to believe that the discussion of alcohol occurred prior to the DWI. *See* Ex. K.

¹¹ Exhibit F is a negative PEth test from July 2023, and Exhibit G is a negative PEth test from October 2023. The Exhibit M test is undated, but the Individual contends it contains the results of a November 2023 PEth test. I have no reason to doubt the veracity of the Individual’s contention as the test results were attached to an email addressed to her, from her employment site, stating, “I’ve screenshot November’s PEth for you and attached it here.” *Id.*

“there had been three months without meeting any of the criteria but less than 12 months.” *Id.* at 91. The DOE Psychologist explained that the reason she suggested that the Individual have a therapist with substance use expertise was because she believes that the Individual has “co-occurring disorders, meaning that she has the alcohol use diagnosis and she also has the depression.” *Id.* at 93–94. The DOE Psychologist noted that she believes that the Individual is receiving “good treatment” for her depression from the Counselor. *Id.* at 94.

The DOE Psychologist elaborated, stating that the importance of a provider who specializes in substance use is that data shows that “when people go through something like [the Individual] has, which is unquestionably traumatic, frightening, embarrassing . . . very stressful – the people who get focused treatment when it’s alcohol related do better in the long term than people who do not receive that.” *Id.* at 94. She noted that with the specialized counseling, people are provided with “very specific tools, things we call relapse prevention, that is how to avoid relapsing with excessing drinking.” *Id.* The DOE Psychologist stated that, although the Individual does not necessarily need to engage in lifelong abstinence, “if she were to return to drinking, she would need to have the . . . information and the skills and the practice to apply controlled drinking tools, refusal skills, [and] identification of triggers,” among others. *Id.* at 94–95.

The DOE Psychologist testified that, at the time of the hearing, her diagnosis remained the same, as the Individual had not yet been abstinent for twelve months. *Id.* at 97. She noted that although the Individual is “certainly on a very good path,” she is “falling a little bit short both in terms of time but also in terms of the alcohol treatment.” *Id.* As such, the DOE Psychologist noted that the Individual had not yet established adequate evidence of rehabilitation or reformation. *Id.* at 98.

VI. 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 mitigated the security concerns cited by the LSO under Guideline G and Guideline J 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.

A. 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.

Adjudicative Guidelines at ¶ 23.

Two pieces of information gave rise to the Guideline G security concerns: (1) the diagnosis of Alcohol Use Disorder (AUD), Moderate, in Early Remission, and (2) the January 2023 DWI. The record demonstrates that the Individual has made great strides in addressing the AUD. She has maintained abstinence from alcohol since February 2023, as demonstrated by her PEth and interlock device records, and she has reengaged with the Counselor to help address the underlying emotional concerns with which she was using alcohol to cope. She has additionally learned and is utilizing new, healthy coping mechanisms to manage her stress.

However, although the Individual is reliably and consistently working with the Counselor, based upon the DOE Psychologist's discussion with the Counselor, it does not appear that the Individual has discussed any alcohol related concerns with the Counselor since the DWI. Further, it does not appear that the Individual disclosed to the Counselor that she consumed a significant amount of alcohol in February 2023 as the Counselor indicated in her letter that the Individual had reported abstinence since the January 2023 DWI. Given that the Individual has not yet received significant professional counseling specifically addressing her alcohol use, I cannot determine that she is participating in a counseling or treatment program and making satisfactory progress. *Id.* at ¶ 23(c). Furthermore, at the time of the hearing, she had not yet been abstinent from alcohol for a period of one year as recommended by the DOE Psychologist to demonstrate reformation. As such, I cannot determine that the Individual has established abstinence in accordance with treatment recommendations.¹² *Id.* at ¶ 23(b).

Turning to the DWI, I note at the outset that I found the Individual's testimony about the events preceding the DWI to be open and vulnerable. It is clear that, on the day of the arrest, the Individual encountered a highly stressful and terrifying situation in the midst of an already taxing time in her life. She awoke to find her infant daughter missing and was unable to reach the daughter's father to check on her welfare. The Individual acknowledged that she managed the situation poorly by consuming a significant amount of alcohol and choosing to drive when she could have contacted law enforcement or a friend for help. However, she acknowledged that she still struggles to reach out to others for help and feels that she has a very limited support system. Although a missing child is truly a unique circumstance, given the Individual's failure to fully resolve the concerns

¹² Given that the Individual has not engaged in an alcohol treatment program, I find that mitigating factor (d) is not applicable. Adjudicative Guidelines at ¶ 23(d).

associated with her AUD, her inability to recognize how much alcohol she has consumed on multiple occasions, and her discrepant statements regarding her future intentions towards alcohol, I cannot find that her decision to drive while intoxicated is unlikely to recur. *Id.* at ¶ 23(a).

For the forgoing reasons, I find that the Individual has not mitigated the Guideline G security concerns.

B. Guideline J

Conditions that may mitigate a Guideline J security concern include:

- a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlike to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- c) No reliable evidence to support that the individual committed the offense; and
- d) There is evidence of success rehabilitation; including, but not limited to, the passage of time without the recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Id. at ¶ 32.

There is no indication in the record that the Individual has engaged in any criminal activity since the DWI; she is remaining abstinent, is complying with the terms of her interlock device requirement, furthering her education, and appears to be a productive and valuable member of her community and family. *Id.* at ¶ 32(a). However, as stated above, the Individual has not yet resolved the AUD, and therefore, I cannot find that her decision to drive while intoxicated is unlikely to recur. *Id.* at ¶ 32(a). Although it could be argued that the Individual was pressured into driving while intoxicated given the distressing situation involving her missing child, as stated above, the Individual has indicated that she has trouble reaching out to others for help and feels that she has a limited support system. This in combination with the existence of the continuing AUD concerns leaves me unable to find that the pressures that gave rise to the DWI are no longer present in the Individual's life.¹³ *Id.* at ¶ 32(b).

VII. 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

¹³ Mitigating factor (c) is not applicable as the Individual acknowledges that she drove while intoxicated. Adjudicative Guidelines at ¶ 32(c).

the security concerns associated with Guideline G and Guideline J. 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