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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: September 18, 2023) Case No.: PSH-23-0142
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Issued: January 18, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

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

I. Background

In August 2021, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 10. In the QNSP, the Individual disclosed that in January 2020, she was arrested and charged with Suspicion Driving Under the Influence (DUI). *Id.* at 30–31. In September 2021, as part of the clearance process, the Individual underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator. Ex. 11. The investigator asked the Individual questions regarding the aforementioned incident. Ex. 11 at 72–73. The Individual obtained her access authorization "sometime in the spring, 2022[.]" Transcript of PSH-23-0142 (Tr.) at 38.

In October 2022, the Individual was arrested and charged with, among other things, DUI, and she reported the incident to DOE approximately one week later. Ex. 7; Ex. 6 at 8; Tr. at 61. Following the report, the Local Security Office (LSO) asked the Individual to complete and submit a Letter of Interrogatory (LOI), which she signed and submitted in April 2023. Ex. 6. Pursuant to the LSO's request, the Individual underwent a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in May 2023. Ex. 8. The DOE Psychologist relied on the

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.

information he obtained in a clinical interview with the Individual, as well as his review of the Individual's Personnel Security File (PSF) and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition*. *Id.* at 3. In May 2023, the DOE Psychologist issued a report (the Report) containing his assessments and conclusions, which included the conclusion that the Individual "has been heavily consuming alcohol, either by bingeing or drinking significant amounts of alcohol on a frequent basis[.]" *Id.* at 8. The DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder. *Id.* He also noted that the results of a Phosphatidylethanol (PEth) test, which was administered to the Individual as part of the evaluation, registered at 352 ng/mL, indicating heavy alcohol consumption. *Id.* at 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified her that it possessed reliable information that created substantial doubt regarding her continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1 at 1–2. The Notification Letter informed the Individual that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on her own behalf and submitted five exhibits, marked as Exhibits A through E. Two witnesses, the Individual's cousin and the Individual's coworker, testified on her behalf. The DOE Counsel submitted eleven exhibits marked as Exhibits 1 through 11 and presented the DOE Psychologist as a witness.

II. Notification Letter

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for access authorization.

A. 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 "[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]" and "[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" *Id.* at ¶ 22(a), (c).

Under Guideline G, the LSO alleged that the DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation,

and further, that the results of the PEth test that was administered registered at a level of 352 ng/mL, indicating heavy alcohol consumption. Ex. 1 at 1. The LSO additionally cited the DOE Psychologist's conclusion that the Individual was consuming more alcohol than she initially reported, and that she was "binging or drinking significant amounts of alcohol on a frequent basis (habitually) to the point of impaired judgment, reliability, and trustworthiness." *Id.* The LSO also alleged that the Individual was arrested and charged with DUI in October 2022, and that she subsequently disclosed the fact that she had consumed an alcoholic beverage prior to her arrest. *Id.* Lastly, the LSO alleged that the Individual was arrested and charged for Suspicion DUI in January 2020, and that although she initially denied having consumed alcohol prior to her arrest, she subsequently admitted that she had refused to submit to a "breath alcohol test because she [had] consumed two drinks prior to the arrest." *Id.* The LSO's invocation of Guideline G is justified.

B. Guideline J

Under Guideline J, "[c]riminal activity creates doubt about a person's judgement, reliability, and trustworthiness. By its very nature, it calls into questions a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is "[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." *Id.* at ¶ 31(b).

Under Guideline J, the LSO alleged that he Individual was charged with DUI in October 2022 and Suspicion DUI in January 2020. The LSO further alleged that the Individual pleaded guilty to Reckless Driving following her arrest in January 2020. The LSO's invocation of Guideline J is justified.

III. Regulatory Standards

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

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h).

Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

As stated above, in her August 2021 QNSP, the Individual disclosed a Suspicion DUI, resulting in a Reckless Driving conviction in June 2020. Ex. 10 at 31. The Individual also stated in the QNSP that she paid the accompanying court costs following the conviction. *Id.* 30–31. During the September 2021 ESI, the Individual disclosed to the investigator that on the night she received the January 2020 Suspicion DUI charge, she had been away from home when her babysitter called her to tell her that there was an emergency. Ex. 11 at 72; Tr. at 53. It was raining when she was on her way back home, and she was pulled over after swerving on the road. Ex. 11 at 72. She refused to submit to a breath alcohol test, as she had been consuming alcohol, and further, she felt “it was her right to deny it.” *Id.* at 72–73. She also told the investigator that although she had consumed two alcoholic beverages “earlier in the day[,]” she had not consumed any alcohol “close to the time she was pulled over.” *Id.* at 73. Accordingly, the Individual expressed her regret over entering the plea to Reckless Driving, and she went on to state that “she feels as if she should not have been pulled over in the first place.” *Id.*

In the LOI and during the hearing, the Individual stated that on the day of the October 2022 arrest, she had been invited to lunch with a person she had met just weeks prior. Ex. 6 at 1; Tr. at 45. She ordered one alcoholic beverage and a glass of water.² Ex. 6 at 1. Upon the arrival of the food she ordered, the Individual left the table to go to the restroom and left her drink with the aforementioned person. Ex. 6 at 1; Tr. at 46. Not long after she began drinking her alcoholic beverage, she “began feeling nauseous and extremely lightheaded[,]” which was “the last thing [she] remember[ed]” until she regained some consciousness while in police custody some hours later. Ex. 6 at 1. As she could not remember finishing her meal, consuming her drink, and driving in her vehicle, the Individual believes that she was “roofied” by the other person with her at the restaurant.³ *Id.*; Tr. at 46–48. She stated that “never in [her] life [has she] consumed one beverage and blacked out for seven hours, six hours.” Tr. at 48.

The police report of the October 2022 incident notes that law enforcement observed the Individual swerving into other lanes and making abrupt stops. Ex. 7 at 3. The officer who stopped her observed that her eyes were red and that her speech was slurred. *Id.* The Individual refused to submit to any field sobriety tests and was observed stumbling when she exited her vehicle. *Id.* at 4. The law enforcement officer noted a 16-ounce can of an alcoholic beverage on the “passenger

² In her testimony, the Individual indicated that upon her arrival, she learned that the gentleman she was lunching with “had already ordered [her] a drink.” Tr. at 46.

³ The Individual testified that at first, she did not “put a lot of thought into” what transpired, but as she was speaking to a family member about the events that took place, she voiced her concern that the gentleman she was with had put something in her drink. Tr. at 51–52. Further, she has no recollection of finishing her drink. *Id.* at 52. The April 2023 LOI was the first time that she first reported potentially being “roofied” on the day of the arrest, because it “[was not] something that was asked” earlier. *Id.* at 52–53, 62. She neither mentioned being drugged to law enforcement on the day of the incident, nor did she mention the alleged drugging when she reported the incident to DOE approximately one week later.

side floorboard.” *Id.* at 5. The can indicated that it contained 8% alcohol, and the officer noted “a spill which was on the front, driver’s side door cupholder.” *Id.* While in custody, the Individual “refused to provide a breath sample.” *Id.* At the hearing, the Individual testified that it is her right to refuse to submit to such tests. Tr. at 40–50.

The Individual indicated in the LOI that her current pattern of alcohol consumption consisted of two 12-ounce beers and two mixed drinks once per week. Ex. 6 at 4. The Individual also indicated that in the alternative, she consumed three to four mixed drinks once per week, and that she usually consumed alcohol on the weekend. *Id.* However, the Individual stated that “[s]ometimes, [she] also will drink one [12-ounce] beer in the evening during the week after dinner.” *Id.* This pattern of consumption began in February 2023. *Id.* Further, she indicated in the LOI that she last consumed alcohol the day prior to submitting the LOI, and that she consumed three ounces of liquor, one 12-ounce beer, and one mixed drink over the span of six hours. *Id.*

The Individual also indicated in the LOI that her alcohol consumption increased in June 2022 due to emotional and financial stress caused by a family member who lived with her at the time.⁴ Ex. 6 at 4. This family member ultimately left her home in January 2023, and as a result, her “drinking habits . . . improved significantly” and she currently remained a social drinker consuming in the pattern described above. *Id.* The Individual did state in the LOI that she consumed alcohol to the point of intoxication approximately once per month, and that she was last intoxicated in early March 2023. *Id.* at 5.

During the psychological evaluation, the Individual recounted the events of October 2022, as she did in the LOI, indicating that she had left her drink at the table and her belief that she had been drugged. Ex. 8 at 3. She also told the DOE Psychologist that she consumed alcohol to the point of intoxication “no more than once a month[.]” and that she would consume two to three beers over the span of three to four hours on weekends. *Id.* at 4. She also indicated that “she does not keep liquor at home[.]” and if she goes out to dinner on Friday nights, she would consume one to two drinks with dinner over the span of three to four hours. *Id.* Approximately once a month, the Individual consumed three to four drinks with her Friday night dinner. *Id.* The Individual admitted to the DOE Psychologist that her alcohol consumption increased in June 2022, when a family member came to live with her. *Id.* at 4–5. At that time, she was consuming two to three drinks in a two-and-a-half-hour period, approximately two to three times per week. *Id.* at 5. The Individual did not report any failed attempts to reduce alcohol consumption to the DOE Psychologist or using larger amounts of alcohol than she initially intended. *Id.* The Individual also did not report any cravings for alcohol to the DOE Psychologist. *Id.*

According to the Report, the results of the PEth test indicated that the Individual was consuming “significantly more than the amount she reported in her” clinical interview. *Id.* at 6. The results of the PEth test, 352 ng/mL, indicated the Individual was consuming “between 3.6 and 7 drinks per day[.]” which is considered “heavy drinking.” *Id.* The DOE Psychologist also administered the Minnesota Multiphasic Personality Inventory-3, the results of which suggested that the Individual

⁴ In her testimony, the Individual stated that she believes her alcohol consumption was problematic during this period of time. Tr. at 54–55.

“tends to minimize any problems she experiences in her life[,]” which “allows her to feel her life is going well[.]” Ex. 8 at 6.

The DOE Psychologist diagnosed the Individual with an Unspecified Alcohol-Related Disorder and indicated that the laboratory tests confirmed that the Individual “has been heavily consuming alcohol, either by bingeing or drinking significant amounts of alcohol on a frequent basis (habitually).” *Id.* at 7. The DOE Psychologist opined that in order for the Individual to show adequate evidence of rehabilitation or reformation, she would need to show six months of “documented” abstinence, and “attend an intensive outpatient (IOP) treatment facility” that had “intense treatment modalities with participation requirements.” *Id.* The DOE Psychologist recommended treatment of eight to twelve weeks and aftercare “for the duration of the six months of abstinence.” *Id.* at 7–8. In the alternative, the Individual could attend Alcoholics Anonymous (AA) meetings four to five times per week. *Id.* at 8. Regardless of whether she attended an IOP or AA, the Individual should “submit to PEth tests every [four to six] weeks” for six months. *Id.*

At the hearing, the Individual first testified that she completed six months of abstinence in August 2023, as it was recommended by the attorney currently handling the October 2022 criminal matter. Tr. at 40–41. She indicated that she began abstaining from alcohol prior to meeting with the DOE Psychologist, in February 2023, and that her progress was captured by a device that she blew into at random times at the behest of her attorney. Tr. at 40–41, 57; Ex. E. In later testimony, the Individual admitted that she was consuming alcohol for about one month around the May 2023 period because the device was broken.⁵ Tr. at 42–43. The Individual also testified that she saw a therapist for one-on-one therapy several times but did not attend AA or an IOP and has not submitted to any PEth tests. *Id.* at 44–45, 62–66. The Individual could not remember when she saw the therapist but remembers discussing her alcohol consumption during sessions. *Id.* at 62–65. The therapist did not provide an alcohol-related diagnosis or make any recommendations for treatment. *Id.* at 65–66. She also stated that she “did try to track the times that [she] was drinking the most” in an effort to reduce the amount she was drinking. *Id.* at 56. In addition to submitting to the aforementioned random breath tests on the device, the Individual provided evidence indicating that she completed four hours of a Drug and Alcohol Awareness class in October 2022, 16 hours of a Drug and Awareness class in July 2023, and a Mothers Against Drunk Driving Victim Impact Panel in July 2023. Ex. 2 at 1–2, 12–14. The criminal matter related to the October 2022 offense remains ongoing. Tr. at 68.

The DOE Psychologist testified that during the psychological evaluation, the Individual “basically seemed to be minimizing her drinking significantly[,]” as the PEth test values were “very high.” *Id.* at 74–75. The DOE Psychologist went on to note that the recommendations for treatment and abstinence in his Report were made because he saw no evidence that the Individual had made any attempts to treat her maladaptive alcohol consumption. *Id.* at 77. He indicated at the hearing that the opinion he provided in the Report had not changed, and that the Individual continues to suffer from an alcohol-related diagnosis. *Id.* at 78.

⁵ An examination of the results of the breath tests that were captured by the device do not indicate any positive results from February 2023 to August 2023. Ex. E.

The Individual's cousin, who "reconnected [with the Individual] over the past couple [of] years," admitted that he does not have any firsthand knowledge regarding the Individual's alcohol consumption, as they live some hours away from each other. *Id.* at 14–15. However, he was able to confirm that he did not see the Individual consuming any alcohol at a May 2022 gathering, and that she has told him that she is "getting [the] help that she needs with regard to the incident that occurred" in 2022. *Id.* at 15–17. In a letter submitted in support of the Individual, the Individual's cousin indicated that she "is trustworthy and [that] the patriotism she displays is unmatched." Ex. 2 at 15.

The Individual's coworker, who also submitted a statement on her behalf, indicated that they work closely together and confirmed that he has never seen the Individual report to work under the influence of alcohol or in a hungover state, or suffer any attendance issues due to her alcohol consumption. Tr. at 21–24. The Individual's coworker stated that when they socialize outside of work, they usually meet for "a pizza . . . and have a . . . cold one." *Id.* at 24. The last time they met to socialize was weeks prior to the hearing when they met at a local brewery. *Id.* at 25. He testified that although he could not remember exactly what they consumed, he stated that the Individual may have consumed two alcoholic beverages over the span of an hour-and-a-half. *Id.* at 25, 34–35. Further, on the occasions where he has observed the Individual consume alcohol, her consumption "[has not] been excessive." *Id.* at 30–31. Between July and December 2023, they went out for drinks about "four times or so." *Id.* at 30. The Individual told him that she had been "roofied" on the day of the October 2022 incident and did not have any recollection of what occurred from the time she consumed her drink to the time she found herself in custody. *Id.* at 28. He stated that he feels she has "been very honest and forthright with [him]" regarding the matter. *Id.* The Individual's coworker stated that he trusts the Individual "100 percent" in terms of her character for honesty, trustworthiness, and reliability. *Id.* at 33–34. In the letter that this witness submitted on behalf of the Individual, he indicated that the Individual is a valued employee, and described her as a woman of "veracity, strength and fortitude." Ex. B.

In another letter that was submitted by a friend of the Individual, who owns an establishment where cigars and drinks are served, the Individual's behavior was described as nothing short of "respectful and professional." Ex. A; Tr. at 57–58. A former manager of the Individual submitted a letter in support of her character, indicating that she "would routinely go above and beyond" and "holds herself to only the highest standards." Ex. C. Another former manager indicated in her letter that the Individual "was hardworking, respectful, dependably and always seeking to learn and grow." Ex. D.

V. Analysis

A. Guideline G

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

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)-(d).

As stated above, the device that the Individual blew into from February 2023 to August 2023 to measure her breath alcohol content did not capture any positive values for alcohol, even though the Individual freely admitted that she had resumed consuming alcohol for approximately one month around May 2023. Although the Individual testified that the device was broken for approximately one month around May 2023, the integrity of this device throughout the period is further thrown into question by the fact that the PEth test results from May 2023 were high, indicating that the Individual was consuming more alcohol than she had reported to the DOE Psychologist. In May 2023, the DOE Psychologist recommended that the Individual remain abstinent for six continuous months. The record before me indicates that the Individual was presumably abstinent for approximately three months following May 2023 psychological evaluation, and by her own admission, she was consuming alcohol around May 2023 for approximately one month. Further, the PEth test results from May 2023 indicate that the Individual was engaging in heavy alcohol consumption. This suggest that she either underreported the amount of alcohol she was consuming at the time or was unable to accurately track her alcohol consumption. Additionally, the Individual has neither completed an IOP nor attended AA meetings. Although the Individual testified that she attended several one-on-one therapy sessions, there is no evidence before me confirming that she attended those sessions or that the purpose of those sessions was to specifically address her alcohol consumption. Lastly, the DOE Psychologist testified that his assessment of the Individual remains the same from the time he evaluated her in May 2023. Accordingly, I cannot conclude that the Individual has mitigated any of the Guideline G concerns.

Although the Individual acknowledged that her alcohol consumption had become problematic in the past, the Individual continues to consume alcohol, and further, she has not sought to address the matter in accordance with treatment recommendations. Additionally, the last alcohol-related criminal incidents that the LSO cited under Guideline G took place in the last several years and did not occur under unique circumstances, as the Individual continues to consume alcohol and operate a vehicle. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to the mitigating factors at (a) and (b). *Id.* at ¶ 23(a), (b). As stated previously,

the Individual has not sought or completed treatment for her alcohol misuse, and accordingly, the mitigating factors at (c) and (d) are not applicable in this case. *Id.* at ¶ 23(c), (d).

B. Guideline J

The Adjudicative Guidelines provide that conditions that can mitigate security concerns under Guideline J include:

- (a) 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;
- (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 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(a)-(d).

The criminal acts alleged in the SSC are inextricably intertwined with the Individual's alcohol consumption. While several years have passed since the January 2020 incident and the related criminal matter, she has not taken action to resolve the concerns associated with her alcohol-related disorder and habitual binge drinking. There is no reliable evidence before me that the Individual sought treatment for her alcohol consumption or abstains from alcohol in an effort to remedy the alleged behavior that resulted in the 2020 and 2022 arrests and charges. Furthermore, the October 2022 incident has not yet been resolved, and accordingly, the record is bereft of any evidence of rehabilitation, restitution, and the like following this criminal incident.

As the Individual continues to consume alcohol and the criminal matter that resulted from the October 2022 incident is ongoing, I cannot conclude 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. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (a). *Id.* at ¶ 32(a).

While the Individual testified that she believes she was drugged with a foreign substance prior to being arrested and charged with alcohol-related offenses in October 2022, and while this could have possibly contributed to her erratic driving, I have no evidence that the Individual was pressured or forced into committing the aforementioned crimes. Therefore, mitigating factor (b) is not applicable in this matter. *Id.* at ¶ 32(b).

Outside of the Individual's assertion that she was drugged in October 2022 and that the road conditions were bad in January 2020, causing her erratic driving, I do not have any reason to doubt that the Individual committed the offense. I have no evidence that the Individual made any contemporaneous assertions that the road conditions were the cause of her erratic driving in January 2020. I do not have any breath alcohol test results, blood test results, or field sobriety test results that indicate the Individual was not driving under the influence of alcohol in January 2020 or October 2022. I do not have a statement from law enforcement that indicates the Individual alleged she had been drugged in October 2022. In fact, what I do have in the record is an admission of erratic driving following the consumption of alcohol in January 2020 and a police report from October 2022 indicating the law enforcement officer observed an open can and spilled alcohol in the cupholder, coupled with the Individual slurring her speech and exhibiting an unstable gait. I also have evidence that the Individual has a history of understating the amount of alcohol she has consumed. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (c). *Id.* at ¶ 32(c).

Lastly, as stated above, although the criminal matter arising from the January 2020 incident was satisfactorily resolved, the criminal matters that resulted from the October 2022 incident remain ongoing. The Individual has not presented any evidence suggesting any change in behavior that would be tantamount to rehabilitation, as she continues to consume alcohol, engaging in the very behavior that resulted in her DUI charges. Further, as the October 2022 case is ongoing, no restitution has been made, fines have not been paid, and it is unclear whether terms of probation will be imposed with which she will need to comply. There is also no evidence of such activities as community involvement or higher education. I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (d). *Id.* at ¶ 32(d).

VI. Conclusion

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

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals