

g/210L and 0.13 g/210L. *Id.* The following day, the Individual appeared in court, and the charges were dismissed without prejudice.³ Ex. 11 at 66.

The arrest was reported to the Local Security Office (LSO), whereupon the Individual was asked to respond to a Letter of Interrogatory (LOI). Ex. 10 at 56; Ex. 11 at 65. In his response to the LOI, dated March 3, 2021, the Individual indicated that he had consumed “3 IPA drinks” prior to the arrest. Ex. 13 at 112. As a result of the incident, the Individual stated, his employer required him to undergo a Fitness for Duty (FFD) evaluation and take alcohol classes. *Id.* at 79. Prior to the arrest, the Individual stated, his pattern of alcohol consumption was “a couple of times in a month” with friends. *Id.* at 80. In the two months since the arrest, however, he had not consumed any alcohol at all. *Id.* “I have learned since my incident,” he stated, “[I] will never drive after a drink.” *Id.* at 81.

On November 20, 2022, the Individual was arrested and charged with Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs (Refused Testing) and Failure to Stop at Stop Sign. Ex. 6 at 30. According to the Criminal Complaint, the arresting officer stopped the Individual’s vehicle after observing him fail to yield at a stop sign. *Id.* The officer smelled “an intense odor of alcoholic beverage coming from within the vehicle” and “an obvious odor of alcoholic beverage on [the Individual’s] breath.” *Id.* After performing “poorly” on the field sobriety tests, the Individual was arrested and driven to the police station. *Id.* At the station, a breath test was administered. *Id.* The results were “an insufficient sample.” *Id.* According to the officer, the Individual “was allowing the air to pass through his lips, around the mouthpiece, and not into the machine.” *Id.*

The Individual promptly reported the arrest to the LSO. *Id.* at 27. In his Personnel Security Information Report, the Individual provided his account of the arrest. *Id.* According to the Individual, when the officer “asked me to get out of the car and asked if I was drinking and that he smelled alcohol in the car I said ‘no I wasn’t’ this was 3AM or 4AM in the morning I was exhausted and delusional.” *Id.* The Individual further claimed that when he submitted to a breath test, the result showed 0.00, but in fact “the result came out as insufficient and I didn’t know.” *Id.* Thereafter, the Individual reported, he was booked “for an aggravated DWI for refusing the test.” *Id.*

The LSO asked the Individual to respond to another LOI, which he completed on February 17, 2023. Ex. 12. In this LOI, the Individual reaffirmed his account of the November 2022 arrest, including that he told the arresting officer he had not been drinking. *Id.* at 2. When asked how much alcohol he had consumed prior to the arrest, the Individual responded, “None.” *Id.* When asked a series of further questions about his alcohol consumption that day, the Individual responded “N/A” to each question. *Id.* at 3. The Individual reported that, subsequent to the arrest, his employer referred him for another FFD evaluation, he was subject to ethylglucuronide (EtG) and breathalyzer tests every day (none of which had come back positive), he was required see a substance abuse professional, and he was taking alcohol classes. *Id.* at 5. When asked to describe his regular pattern of alcohol consumption, the Individual reported that he typically consumed three to four beers with friends on “some weekends.” *Id.* at 7. This pattern had been consistent, he

³ The Individual later acknowledged, during a clinical interview with a DOE-contracted psychologist, that he “‘got lucky’ that the charge was dismissed because the courts were backed up.” Ex. 14 at 88.

stated, for approximately nine years. *Id.* He asserted that his last consumption of alcohol occurred “[p]robably sometime in November [2022].” *Id.* at 8. When asked if he felt like he had a problem with alcohol, he responded, “No, I do not feel like I have an issue with alcohol.” *Id.* at 10. In the future, he stated, “I would like to keep alcohol at a low consumption on occasion,” and “I do not intend to drive if I consumed alcohol” *Id.* at 11.

On June 9, 2023, the Individual reported to the LSO that he was found guilty of the charges stemming from the November 2022 arrest. Ex. 3 at 19. The Individual’s sentence entailed four days of confinement, 24 hours of community service, and one year of unsupervised probation. Ex. 8 at 45. The conditions of the Individual’s probation included, among other requirements, meeting with the County Substance, Treatment, Outreach, and Prevention Program (C-STOP) within seven days and maintaining contact as instructed. *Id.*

On June 15, 2023, the Individual sent an email to the LSO admitting for the first time that on the night of his November 2022 arrest, he had drunk three shots of tequila within 30 minutes. Ex. 5 at 24. As to why he hadn’t reported this when asked on the February 2023 LOI, the Individual claimed that he “misunderstood the question.” *Id.*

A DOE-contracted psychologist (Psychologist) conducted a two-and-a-half-hour clinical interview of the Individual on August 2, 2023, and prepared a Psychological Assessment (Report) documenting her findings and conclusions.⁴ Ex. 14. The Report describes the Individual’s account of the events surrounding his November 2022 arrest. *Id.* at 86. According to the Individual, he was driving his friend home from a casino, and at one point, he was texting and asked his friend to “take the wheel.” *Id.* That was when he drove past the stop sign, which led to the police officer pulling him over. *Id.* The Individual acknowledged to the Psychologist that he had consumed three shots of tequila during the 30 minutes he spent at the casino. *Id.* Since the November 2022 arrest, the Individual affirmed, he had not consumed any alcohol at all. *Id.* This affirmation was supported by the negative result of the PEth test administered on the day of the clinical interview. *Id.* at 90. The Individual expressed to the Psychologist that he wanted to “cut out alcohol completely.” *Id.* at 89.

In her Report, the Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder, pursuant to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-V-TR)*. *Id.* at 90. She based this diagnosis on the following: the Individual’s history of binge drinking; the Individual’s two DWI arrests in less than two years; and the Individual’s pattern of dishonesty concerning his alcohol use.⁵ To demonstrate rehabilitation, the

⁴ In addition to the information obtained from the clinical interview, the Psychologist based her Report on her review of the Individual’s Personnel Security File and the results of psychological testing—specifically the Minnesota Multiphasic Personality Inventory-3, which the Psychologist administered to the Individual at the time of his interview. Ex. 14 at 86. Immediately following the interview, the Psychologist had the Individual undergo a Phosphatidylethanol (PEth) test, which “detects any significant alcohol use over the past three to four weeks.” *Id.* at 90.

⁵ According to the Report, this pattern of dishonesty included the Individual’s repeated failure to admit that he had been drinking the night of the November 2022 arrest, until he finally came clean on June 15, 2023. *Id.* at 90. The Psychologist also questioned the Individual’s report that he drank only three beers on the night of his January 2021

Psychologist opined, the Individual would need to abstain from alcohol for a period of at least one year and attend alcohol rehabilitation counseling with both individual and group components. *Id.* at 90–91. Alternatively, she stated, he could attend meetings of Alcoholics Anonymous (AA) or a similar evidence-based treatment approach at least three times weekly, obtain the support of a sponsor, and document his attendance and participation. *Id.* at 91. To provide evidence of abstinence, she opined, the Individual should undergo at least six PEth tests. *Id.*

On October 17, 2023, the LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted 16 exhibits (Ex. 1–16). The Individual submitted eight exhibits (Ex. A–H). At the hearing, the Individual testified on his own behalf and offered the testimony of his mother, his stepfather, his Employee Assistance Program (EAP) counselor, his C-STOP counselor, and his manager at work. Hearing Transcript, OHA Case No. PSH-24-0029 (Tr.) at 12, 25, 40, 66, 89, 96. The LSO offered the testimony of the Psychologist.⁶ *Id.* at 135.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 5.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. According to the LSO, the behavior that gave rise to the Guideline E concerns were the Individual’s failure on three occasions to admit that he consumed alcohol prior to the November 2022 arrest: on the February 2023 LOI, on his November 2022 report to the LSO, and to the police officer at the scene of the arrest. Ex. 1 at 5. This allegation justifies the LSO’s invocation of Guideline E. *See* Adjudicative Guidelines at ¶ 16(a), (b).

arrest. *Id.* at 88, 90. Based on the Individual’s BAC at the time of the arrest, she opined, it was “highly probable” that he “significantly” underreported the amount of alcohol he had consumed. *Id.*

⁶ The parties stipulated to the expert qualifications of the Psychologist, the EAP counselor, and the C-STOP counselor, and on that basis, I allowed each of these witnesses to provide expert opinion testimony in their respective professional fields. Tr. at 9–10. Further, on the agreement of the parties, the Psychologist was present at the hearing to observe the testimony of all the other witnesses prior to giving her own testimony.

The LSO cited Guideline G as the second basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 5. “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. According to the LSO, the factors that gave rise to the Guideline G concerns were (1) the Psychologist’s determination that the Individual meets the *DSM-V-TR* criteria for a diagnosis of Unspecified Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation, and (2) the Individual’s two DWI arrests on November 20, 2022, and January 11, 2021. Ex. 1 at 5–6. These allegations justify the LSO’s invocation of Guideline G. *See* Adjudicative Guidelines at ¶ 22(a), (d).

The LSO cited Guideline J as the third basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 6. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. According to the LSO, the events that gave rise to the Guideline J concerns were the Individual’s two DWI arrests, including the that the Individual was found guilty and sentenced to four days of confinement, 24 hours of community service, and one year of probation in connection with the November 2022 incident. Ex. 1 at 6. These allegations justify the LSO’s invocation of Guideline J. *See* Adjudicative Guidelines at ¶ 31(a), (b), (c).

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 Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

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

IV. HEARING TESTIMONY

The Individual's mother and stepfather testified that the Individual lived with them from childhood until one year prior to the hearing. Tr. at 12–13, 27. They both testified that, in all their years living with the Individual, they never saw him drink in their house, they were unaware of the Individual's alcohol consumption outside of the house, and they were surprised to learn about the Individual's DWI arrest in January 2021. *Id.* at 17, 20–21, 30, 33–34. The stepfather indicated that he was “proud” of the Individual for admitting to the LSO that he had been untruthful about his alcohol consumption prior to the November 2022 arrest. *Id.* at 16. Similarly, the mother said she “supported” the Individual's decision to come clean. *Id.* at 29. Both the mother and stepfather asserted the Individual had lied because he was afraid of losing his job, but that it was not in his character to be dishonest. *Id.* at 16, 29. They both attested to his trustworthiness and dependability. *Id.* at 18–19, 32–33.

The Individual's manager testified that he has known the Individual for seven years, first as a student-mentee and now as an employee. *Id.* at 90. He described the Individual as a “very good worker” and someone who is reliable and trustworthy. *Id.* at 91–92; *see also* Ex. C–D (copies of the Individual's performance appraisals, a spot award, and promotion justification reflecting the Individual's notable job performance from 2021 to present).

The Individual's EAP counselor testified that she leads a six-week class entitled Alcohol Awareness and Education, which consists of one-hour-and-fifteen-minute sessions every Thursday afternoon, where participants “explore their own relationship to alcohol.” Tr. at 42, 53–55. She stated that the Individual successfully completed this class two times: once in early 2021 after his first DWI arrest, and again in early 2023 after the second DWI arrest. *Id.* at 42–44; Ex. B (Certificate of Completion dated March 9, 2023, certifying that the Individual successfully completed the Alcohol Awareness and Education class). In November 2023, the EAP counselor testified, the Individual began attending her 12-week Maintaining Changes class,⁷ which she described as “kind of a support group” that meets every Thursday afternoon for one hour and fifteen minutes. Tr. at 57–59. The Individual successfully completed this class in February 2024. *Id.* at 45; Ex. G (Certificate of Completion dated February 1, 2024, certifying that the Individual successfully completed the Making Changes in Alcohol Use class). The EAP counselor testified that the Individual benefited from the Maintaining Changes class, that he found helpful the feedback he received from other participants, and that he expressed to her that he wants to continue with the class. Tr. at 47–48; 58. She described the Individual as becoming “more comfortable and open and interactive” over the course of the 12-week class. *Id.* at 48.

The EAP counselor testified that, in addition to the classes, she has met with the Individual on four occasions for one-on-one counseling. *Id.* at 59. At their first counseling session in July 2023, the Individual confided to the EAP counselor that he had lied about his alcohol consumption and stated that “it was eating him alive” and “he was very ashamed of himself.” *Id.* at 60. The Individual has told her, she testified, that he is abstinent from alcohol, that he is avoiding the friends with whom he used to “party,” and that he is saving money to buy a house. *Id.* at 49. She testified that the

⁷ The EAP counselor testified that Maintaining Changes is the new name for the class, which used to be entitled Making Changes in Alcohol Use: Action to Maintenance. Tr. at 44–45. The certificate of completion still carries the prior class name. *Id.* at 45; *see* Ex. G.

Individual has been undergoing “an enormous amount of stress and worry,” but has not turned to alcohol as a way to cope. *Id.* at 50. With regard to future alcohol use, she testified, the Individual has expressed that he wants to completely abstain. *Id.* at 51. When asked about his prognosis, the EAP counselor testified, “I think it’s very good.” *Id.* at 52.

The Individual’s C-STOP counselor testified that he was “one of [the Individual’s] group facilitators and the person overseeing his case [at C-STOP].” *Id.* at 67. In August 2023, the counselor explained, the Individual admitted himself into an intensive outpatient program (IOP) at C-STOP, which is a 90-day program that consists of three group sessions and one individual counseling session every week. *Id.* at 67-68. The counselor confirmed that the Individual attended each and every session, was very engaged in his treatment, and made significant progress. *Id.* at 68; 74–75. After successfully completing the IOP, the counselor testified, the Individual began the aftercare program. *Id.* at 75–76. Although only required to attend one aftercare session per month, the Individual has done so twice a month, and plans to continue attending. *Id.* at 79–80. Among the skills the Individual has been working to develop are effective communication skills, distress tolerance, mindfulness training, and getting more regular exercise. *Id.* at 69–72. According to the counselor, the Individual performs a breathalyzer test every time he attends a C-STOP session, and all have come back negative for the presence of alcohol. *Id.* at 73. The C-STOP counselor opined that the Individual has a “favorable” prognosis, given his successful completion of the IOP, his dedication to his treatment, and the honesty and integrity he has exhibited. *Id.* at 78.

The Individual testified about the events surrounding his two DWI arrests. Regarding the arrest in January 2021, he stated he had consumed three “strong” beers prior to driving and was then pulled over for speeding. *Id.* at 126. He testified that he thought “he felt fine to drive.” *Id.* at 127. He admitted that he had done poorly on the field sobriety tests, but claimed, “I don’t have good balance, and it was cold that night too.” *Id.* After the arrest, the Individual testified, he stopped drinking for several months, before starting up again sometime in the second half of 2021. *Id.* at 128–29. Regarding the arrest in November 2022, the Individual acknowledged that he drank three shots of tequila in 30 minutes before driving a mile to his friend’s house. *Id.* at 129. He further acknowledged that he ran a stop sign because he was texting while his friend held the steering wheel. *Id.* at 129. “I know it wasn’t the smartest thing,” he said. *Id.*

The Individual admitted that he lied at least three times about his alcohol consumption that led to the November 2022 DWI arrest. *Id.* at 116–18. He lied to the police officer at the scene of the arrest, he lied to his FFD case manager at their initial meeting in January 2023, and he lied on the February 2023 LOI he submitted to the LSO. *Id.* The Individual ultimately came clean to the FFD case manager around May or June 2023. *Id.* at 118–19. When asked why it took so long, he stated that he was “scared.” *Id.* at 119. He said it took “everything inside of me to call her and tell her that I lied, because I hate disappointing people.” *Id.* at 120. Similarly, the Individual sent an email to the LSO on June 15, 2023, in which he corrected his lie, because he felt it “was the right thing to do.” *Id.* at 98, 121. Even in that email, however, he was not entirely truthful, because he told the LSO he didn’t understand the question on the February 2023 LOI. *Id.* at 122. At the hearing, the Individual admitted, “I did [understand the question], and I just didn’t know how to come forward.” *Id.* He testified that in the future, he will definitely “come forward with the truth, no matter how horrible I think it would make me look, no matter how horrible it would make me sound. I’ll just come up front. This has been a total learning experience for me.” *Id.* at 123.

The Individual testified that he decided to stop all alcohol consumption in November 2022, because getting his clearance back was “way more important to [him] than drinking any kind of alcohol.” *Id.* at 100. He testified that he doesn’t want to drink any more, he doesn’t have any cravings for alcohol, and “everyone” is supportive of his sobriety. *Id.* His abstinence is corroborated, he asserted, by the negative EtG tests his employer required him to take beginning in January 2023. *Id.* at 101–02; Ex. A (documentation confirming the negative results of 22 EtG tests administered to the Individual between January and November 2023). He also underwent four monthly PEth tests, at his own cost, all of which yielded negative results. Tr. at 102–03; Ex. A, E (documentation of the negative results of four PEth tests administered to the Individual between November 2023 and February 2024). He stated that, through his counseling with C-STOP and the EAP, he has come to understand that the risks of alcohol consumption outweigh the benefits. Tr. at 101. The IOP, he testified, taught him how to cope with stress by keeping “busy with healthy outlets.” *Id.* at 109–10. It also taught him how to cope with anxiety by using breathing and relaxation techniques, and how to manage worries by not overthinking. *Id.* at 110. The Individual indicated that his triggers are “hanging out with friends that drink” and “boredom.” *Id.* at 111. He avoids those triggers by spending time with family and friends that don’t drink, going to the movies, going shopping, and playing video games. *Id.* The Individual further testified that he has participated in SMART Recovery,⁸ and has completed all five stages of the program: contemplation, preparation, action, maintenance, and exit. *Id.* at 111–13. He testified as to all the ways his life has benefitted from abstinence, including by reducing the risk of legal trouble and losing his job, improving his relationship with his family, and feeling better and healthier. *Id.* at 113–14. Since abstaining from alcohol, he asserted, he is more clear-minded, his life is better, and he has grown as a person. *Id.* at 114. He enjoys the aftercare sessions at C-STOP and the individual sessions with his EAP counselor, and he plans to continue both. *Id.* at 124.

The Psychologist testified that, based on all the exhibits and testimony presented in the hearing, the Individual has met or exceeded all of her recommendations to demonstrate rehabilitation or reformation from his Unspecified Alcohol-Related Disorder. *Id.* at 138–139. The one exception she noted was that the Individual had provided evidence of only five negative PEth tests⁹ instead of six, but this exception did not alter her opinion, particularly because he has shown evidence of 22 negative EtG tests since January 2023. *Id.* She was impressed that both of his counselors gave him a positive prognosis, that he came clean regarding his alcohol use prior to the November 2022 arrest in order to clear his conscience, and that he was committed to being honest going forward. *Id.* at 139–40. Ultimately, she concluded, the Individual no longer meets the diagnosis for Unspecified Alcohol-Related Disorder. *Id.* at 140–41.

V. ANALYSIS

The Individual admits to the factual allegations contained in the SSC, but he seeks to mitigate the security concerns raised by the LSO. Ex. 2 at 13–14.

⁸ The Psychologist identified SMART Recovery as one of the “evidence-based treatment approaches” that would serve as an alternative to AA.

⁹ The five PEth tests she referred to include the four the Individual paid for himself, and the one that the Individual underwent as part of the psychological evaluation. Tr. at 138–39.

A. Guideline E

Conditions that may mitigate security concerns under Guideline E (Personal Conduct) include:

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

As an initial matter, the mitigating factors at paragraph (b), (e), (f), and (g) are inapplicable to the facts of this case. The LSO has not alleged any vulnerability to exploitation, manipulation, or duress, nor do the LSO's concerns involve the association with persons involved in criminal activities. Moreover, the Individual has not claimed that his false statements were given on the advice of legal counsel or other professional, but rather he has admitted to his dishonest behavior.

The Individual has not demonstrated mitigation under the conditions set forth in paragraph (a). The Individual's failure to admit that he consumed alcohol prior to the November 2022 arrest was reaffirmed on multiple occasions, to the arresting officer, to the LSO, and to his FFD case manager. His eventual decision to correct the falsification, via an email to the LSO in June 2023, was certainly not prompt. Nor was it made entirely in good-faith. Even in his June 2023 email, he insisted that his mis-statement on the February 2023 LOI was because he misunderstood the question—not because, as he admitted at the hearing, he was scared to tell the truth. As such, I cannot find that the Individual made prompt, good-faith efforts to correct his falsification.

Similarly, the Individual has not demonstrated mitigation under the conditions of paragraph (c). Failing to provide truthful answers during a national security investigation is not a minor offense, but one that raises “special interest” and “will normally result in an unfavorable national security eligibility determination.” Adjudicative Guidelines at ¶ 15. In this case, the offense persisted over a period of seven months and lasted until just eight months prior to the hearing. As such, the Individual’s false statements are not mitigated by the passage of time or the infrequency of the behavior, and nor are there any unique circumstances that make his behavior unlikely to recur.

Despite the foregoing, I find the Individual has provided sufficient evidence to mitigate his behavior under the conditions of paragraph (d). The Individual has stated unequivocally that his dishonesty was wrong. At the hearing, he insisted he has learned from the experience and will never again conceal the truth from security clearance personnel. The Individual has openly acknowledged his dishonesty in both his group and one-on-one sessions with the EAP counselor, and she testified persuasively as to the remorse he has expressed. The C-STOP counselor similarly praised the Individual’s honesty and authenticity during his IOP and aftercare sessions. And the Individual’s mother and stepfather stated they support and encourage the Individual to be truthful. I believe that through counseling and self-reflection, the Individual has successfully changed his behavior and outlook, and as a result, his dishonesty is unlikely to recur.

B. Guideline G

Conditions that may mitigate security concerns under Guideline G (Alcohol Consumption) 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.

The Individual has not demonstrated mitigation under the conditions set forth in paragraphs (a) or (b). With regard to paragraph (a), because the Individual’s problematic alcohol consumption occurred largely uninterrupted for nine years, up until as recently as November 2022, I cannot find that it is mitigated by the passage of time, the infrequency of the conduct, or any unusual circumstances under which it occurred. With regard to paragraph (b), I am not persuaded that the

Individual has fully acknowledged his pattern of maladaptive alcohol use. The Individual's decision to remain abstinent, he explained, was driven mostly by a desire to stay out of legal and financial trouble. Moreover, he continues to insist that he was "fine to drive" on the night of the January 2021 DWI arrest, when his BAC was recorded as 0.14 g/210L and 0.13 g/210L, well above the legal limit.

Nonetheless, I find the Individual advanced sufficient evidence to mitigate the Guideline G concerns pursuant to paragraphs (c) and (d). With regard to paragraph (c), the Individual completed a 90-day IOP in November 2023. Currently, he participates in twice monthly aftercare sessions, weekly support group meetings through his EAP, and periodic counseling sessions with his EAP counselor, all of which he plans to continue. The Individual has no previous history of treatment and relapse,¹⁰ and both the C-STOP and EAP counselors testified convincingly as to his satisfactory progress. They have observed him grow and mature, and they have seen him become more honest and open. Both counselors opined that his prognosis is positive.

With regard to paragraph (d), the Individual has successfully completed the IOP, the Alcohol Awareness and Education class, and the Maintaining Changes class, and he continues to attend both the Maintaining Changes class and aftercare sessions at C-STOP. He has demonstrated a clear and established pattern of abstinence, supported not only by his own testimony that he has abstained from alcohol consumption since November 2022, but also by the negative results of five PEth tests taken since August 2023, 22 EtG tests taken since January 2023, and dozens of negative breathalyzer tests administered by C-STOP. The Psychologist affirmed that the Individual has met or exceeded all of the treatment recommendations she set forth in her Report, and she found that he no longer meets the diagnosis for Unspecified Alcohol-Related Disorder.

Finally, as to the LSO's concerns associated with the Individual's DWI arrests in 2021 and 2022, those concerns are no longer present in light of the Individual's success in resolving his alcohol misuse. Because the Individual is reformed and rehabilitated from his alcohol-related condition, his DWI arrests are unlikely to recur.

C. Guideline J

Conditions that may mitigate security concerns under Guideline J (Criminal Conduct) 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

¹⁰ The Individual did previously abstain from alcohol for several months following the January 2021 DWI arrest and his first successful completion of the Alcohol Awareness and Education class, only to resume alcohol consumption in the second half of 2021. But unlike the Individual's short-lived abstinence in 2021, the Individual's current 15-month period of abstinence is underpinned by his completion of the IOP, his formation of a support network, his demonstrated behavioral changes, and his stated commitment to maintain abstinence indefinitely. For that reason, I do not consider the Individual's relapse in 2021 to discredit the progress he has made since his November 2022 arrest.

- (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.

The Individual has demonstrated mitigation under the conditions set forth in paragraphs (a) and (d). The Individual's two criminal arrests were tied directly to his alcohol consumption. Because the Individual has demonstrated rehabilitation from his alcohol-related disorder and resolved the LSO's alcohol-related concerns, as described above, he has removed the circumstances that gave rise to his criminal behavior. Thus, I find, the criminal behavior is unlikely recur.

Regarding paragraphs (b) and (c), the Individual has not alleged that his criminal behavior was a result of pressure or coercion, and he has admitted to committing the criminal acts. As such, these mitigating conditions are not applicable.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline E, Guideline G, and Guideline J of the Adjudicative Guidelines. After considering all of the relevant information, 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 brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Matthew Rotman
Administrative Judge
Office of Hearings and Appeals