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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: December 29, 2023) Case No.: PSH-24-0042
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Issued: April 23, 2024

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 should not be granted access authorization.

I. BACKGROUND

On February 15, 2023, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 4 at 62.² The Individual disclosed on the QNSP that he was arrested and charged with underage possession of alcohol in 2020, and that he had entered into a plea agreement pursuant to which he was ordered to perform fifty hours of community service and complete an alcohol education class. *Id.* at 53–54. He also disclosed that he had smoked marijuana recreationally from 2018 to December 2022, he had been a “somewhat frequent user” of marijuana from 2019 to 2021, and that he had used LSD “a couple of times (3-5)” from 2019 to 2021. *Id.* at 55. The Individual checked boxes marked “No” on the QNSP in response to questions concerning whether he had been cited for any infractions for which he was fined \$300 or more in the prior seven years, arrested for any offenses

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 DOE submitted its exhibits as an exhibit notebook containing each of the exhibits. The exhibits contain a variety of non-consecutive page markings relating to documents from which the exhibits were excerpted. This Decision will refer to the pages in the order in which they appear in the exhibit notebook regardless of their internal pagination.

other than those he disclosed in the prior seven years, ever been charged with an offense involving drugs, or been involved in the purchase of illegal drugs. *Id.* at 54, 56.

A background investigation of the Individual revealed that he was arrested and charged with reckless driving in 2021, cited for marijuana possession in 2020, and was cited for four traffic infractions all involving fines of less than \$300 from 2018 to 2022. *Id.* at 71–73, 80, 85. On March 23, 2023, the Individual was interviewed by an investigator (Investigator). *Id.* at 67. During the interview, the Individual disclosed that he had purchased marijuana and LSD on multiple occasions and was disciplined by a university because of his alcohol and drug use. *Id.* at 69, 75.

The LSO issued the Individual a letter of interrogatory (LOI) concerning his history of drug and alcohol use. Ex. 5. The Individual submitted a response to the LOI on May 19, 2023, in which he reported that he consumed alcohol to intoxication on a monthly basis. *Id.* at 108–10. On June 30, 2023, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 6 at 112. The DOE Psychologist subsequently issued a report of the psychological evaluation (Report) in which he opined that the Individual habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 114. The DOE Psychologist further opined that the Individual’s “impulsivity consistently impairs his behavior while operating a motor vehicle” and that this impulsivity demonstrated that the Individual had “an emotional condition that can impair his judgment and reliability.” *Id.* at 115.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E, G, H, I and J of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted nine exhibits (Exs. 1–9). The Individual submitted twelve exhibits (Exs. A–L).³ The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-24-0042 (Tr.) at 2, 20.⁴ The LSO offered the testimony of the DOE Psychologist. *Id.* at 2, 96.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as a basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 2 at 6–8.

³ The Individual submitted exhibits A–I, J–K, and L via three separate submissions. This Decision cites to the exhibits in the order in which they appear in each submission regardless of their internal pagination.

⁴ Due to an unnumbered first page, the second page of the transcript is marked as page 1, and the pagination of the transcript does not correspond to the total number of pages included therein. This Decision cites to the transcript based on the page numbers on the upper right corner of each page therein.

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. The SSC cited the Individual's: (1) inconsistent accounts of the frequency and amount of alcohol and marijuana that he used, (2) failure to disclose his citation for marijuana possession and purchasing of marijuana and LSD on the QNSP, (3) failure to report his arrest for reckless driving on the QNSP, (4) history of alcohol and drug use, (5) record of traffic infractions, and (6) failure to timely complete the terms of his probation in connection with his 2020 arrest for underage possession of alcohol. Ex. 2 at 6–8. The LSO's allegations that the Individual deliberately omitted relevant facts from the QNSP and LOI, and engaged in conduct insufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information, justifies its invocation of Guideline E.⁵ Adjudicative Guidelines at ¶ 16(a), (c).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as another basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at 4–5. "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. The SSC cited the Individual's admission to consuming alcohol to intoxication on a monthly basis, the DOE Psychologist's opinion that the Individual habitually or binge consumed alcohol to the point of impaired judgment, and the Individual's arrest for underage possession of alcohol. Ex. 2 at 4–5. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work and habitually or binge consumed alcohol to the point of impaired judgment justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO cited Guideline H (Drug Involvement and Substance Abuse) as another basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at 8–9. "The illegal use of controlled substances . . . can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 24. The SSC cited the Individual's admitted purchase and use of marijuana and LSD, his citation for marijuana possession in 2020, and his discipline by

⁵ The allegations raised by the LSO under section III(A)(1), (2), and (5) of the SSC concerned trivial inconsistencies in the Individual's reporting of derogatory information during the adjudication of his eligibility for access authorization. In these allegations, the LSO cited inconsistencies in the Individual's reporting of the dates and frequency of his substance misuse as indicative of the Individual having provided false or misleading information. In each case, the Individual admitted to having engaged in the derogatory conduct for several years and the inconsistencies in the information he provided were minor. I find that these allegations concerned such inconsequential differences in the Individual's reported substance misuse that they do not raise security concerns under Guideline E. The remaining allegations under Guideline E raised security concerns and are discussed below. *Infra* p. 11.

a university for marijuana use in 2019. Ex. 2 at 8–9. The LSO’s allegations that the Individual engaged in substance misuse and illegally possessed drugs justifies its invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (c).

The LSO additionally cited Guideline I (Psychological Conditions) as a basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 2 at 5–6. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist’s opinion that the Individual had an emotional condition that could impair his judgment, stability, reliability, or trustworthiness. Ex. 2 at 5–6. The DOE Psychologist’s opinion that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I. Adjudicative Guideline at ¶ 28(b).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 2 at 9–11. “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. The SSC cited the Individual’s arrest for underage possession of alcohol, citation for possession of marijuana, admission to having used marijuana and LSD, arrest for reckless driving, and history of traffic infractions. Ex. 2 at 9–11. The LSO’s allegations that the Individual engaged in numerous instances of unlawful conduct justify its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or 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

The Individual began using alcohol and marijuana at age sixteen. Ex. 7 at 113 (reflecting the Individual's statements to the DOE Psychologist that he would occasionally "sneak a little bit of dad's whiskey" and smoked marijuana approximately monthly at that age). In 2019, the Individual began attending a university (University). Ex. 4 at 33. While attending the University, the Individual significantly increased the frequency of his marijuana use. Ex. 6 at 108 (indicating in response to the LOI that he used marijuana "3-4 times a week [from] 2019-2023"); Ex. 7 at 113 (indicating that he told the DOE Psychologist that he used marijuana weekly while attending the University); Tr. at 63 (indicating that he used marijuana "three to four times a week"). The Individual also used LSD on four occasions while attending the University. Ex. 6 at 108. The Individual purchased marijuana approximately monthly and LSD on isolated occasions from drug dealers to whom he was introduced by friends. Ex. 4 at 75; Ex. 6 at 108; Tr. at 62-64.

In November 2019, the Individual was disciplined by the University after a campus police officer observed him smoking marijuana with friends. Ex. 4 at 69. The University placed the Individual on probation until the end of the following semester and required him to complete a two-hour alcohol and drug education class. *Id.* at 69, 77. In March 2020, the Individual was issued a citation for possession of marijuana. *Id.* at 85. The charges against the Individual in connection with this incident were dismissed in September 2020. *Id.*

In August 2020, the Individual was arrested and charged with underage possession of alcohol. *Id.* at 83. The Individual pleaded guilty and was sentenced to a twelve-month term of probation. *Id.* at 84. Pursuant to the terms of his probation, the Individual was ordered to pay a fine, attend a sixteen-hour alcohol education program, and perform fifty hours of community service. *Id.* at 71, 84. The University also placed the Individual on probation until the end of the following semester and required him to attend a two-hour alcohol education class. *Id.* at 69. The University extended the Individual's probation for an additional semester after he failed to complete the alcohol education class by the prescribed deadline. *Id.* at 77.

From 2018 through 2022, the Individual was cited for speeding at least fifteen miles above the posted speed limit on three occasions and driving with an unauthorized tint, sign, or decal on his windshield on one occasion. *Id.* at 92-93. In September 2021, the Individual was arrested and charged with reckless driving. *Id.* at 83-84. The Individual pleaded guilty to a reduced charge of improper driving and was ordered to pay \$566 in fees and fines. *Id.* The Individual was required to complete defensive driving courses on "three or four" occasions as a result of these traffic offenses. Tr. at 75.

The Individual submitted the QNSP on February 15, 2023. Ex. 4 at 62. As part of completing the QNSP, the Individual certified that his statements therein were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." *Id.* The Individual disclosed his August 2020 arrest for underage possession of alcohol on the QNSP. *Id.* at 53. The Individual checked a box marked "No" in response to questions asking whether he was cited for any offense resulting in a fine of \$300 or more or arrested on any other occasions in the prior seven years. *Id.* at 54. He also checked a box marked "No" in response to a question asking whether he had ever been charged with an offense involving alcohol or drugs. *Id.*

On the section of the QNSP concerning illegal drug use, the Individual disclosed that he had “[s]moked marijuana a couple times in [his] life,” that he used marijuana from March 2018 to December 2022, and that he was a “somewhat frequent user from 2019-2021” but had used marijuana “less frequently since 2021.” *Id.* at 55. The Individual further disclosed that he had used LSD “recreationally with friends . . . a couple of times (3-5).” *Id.* The Individual checked a box marked “No” in response to a question asking whether he had “been involved in the illegal purchase . . . of any drug or controlled substance.” *Id.* at 56.

On March 23, 2023, the Investigator conducted an interview of the Individual. *Id.* at 67. When confronted by the Investigator with his history of traffic infractions, the Individual indicated that the speeding violations and windshield violation resulted in fines of less than \$300 and therefore that he had not disclosed them on the QNSP. *Id.* at 71–72. With respect to his arrest and charge for reckless driving, the Individual admitted that he should have disclosed the offense on the QNSP but did not do so “due to not paying appropriate attention to the wording of the question.” *Id.* at 72. The Investigator offered the Individual another opportunity to disclose incidents of unlawful conduct, and the Individual then admitted to his citation for marijuana possession in 2020. *Id.* The Individual indicated that he did not disclose the charge on the QNSP because he believed that he was not required to do so as “the charge never went to court and was dismissed.” *Id.* at 73. The Individual told the Investigator that he had last used marijuana in January 2023. *Id.* at 74. Regarding his alcohol use, the Individual indicated that he had “consumed about two to four shots of liquor one to two times a week from about 08/19 until present.” *Id.* at 76.

The LSO issued the Individual the LOI in May 2023. Ex. 5 at 100. In his response, the Individual indicated that he used marijuana “infrequently” from 2017 to 2019 and “3-4 times a week” from 2019 to 2023. *Id.* at 108. Regarding his alcohol consumption, the Individual stated that he consumed an average of five alcoholic drinks per sitting approximately every other week and that he consumed alcohol to the point of intoxication approximately monthly. *Id.* at 109.

In May 2023, the Individual was charged with Reckless Driving after law enforcement officers observed him travelling approximately 90 miles per hour in his vehicle. Tr. at 35; Ex. 7 at 113. As a result of this offense, the Individual was sentenced to serve two weeks in jail, he was ordered to pay a fine, his driver’s license was suspended from October 2023 to April 2024, and he was required to attend a reckless driver education program. Tr. at 77–78, 86.

The Individual graduated from the University with a Bachelor of Science degree in May 2023. Ex. F at 21. In June 2023, the Individual began working for a consulting firm. Tr. at 21. The Individual has a positive employment record with the consulting firm. *See* Ex. G at 23 (reflecting a letter from a project manager indicating that the Individual is a competent, reliable, and trustworthy employee).

The Individual met with the DOE Psychologist for a clinical interview on June 30, 2023. Ex. 7 at 112. The Individual disclosed his May 2023 Reckless Driving offense to the DOE Psychologist. *Id.* at 113. The Individual “reported loving the feeling of driving [his luxury vehicle],” such as its speed and acceleration. *Id.* at 113–14. The Individual characterized himself as having experienced “some challenges with impulsivity, needing to weigh the consequences of his decision making.” *Id.* at 114.

Regarding his alcohol consumption, the Individual told the DOE Psychologist that he usually consumed four to five alcoholic drinks in a sitting once weekly. *Id.* at 113. The Individual indicated that he would find it difficult to abstain from alcohol “because it is part of his family culture.” *Id.* at 114–15. At the request of the DOE Psychologist, the Individual provided a sample for a Phosphatidylethanol (PEth) test, the results of which were positive at 160 ng/mL. *Id.* at 116. According to the laboratory that provided the results of the PEth test, “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption.” *Id.*

On August 28, 2023, the DOE Psychologist issued his Report. *Id.* at 115. In the Report, the DOE Psychologist concluded that the Individual habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 114. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by participating in weekly alcohol-related counseling for a minimum of twelve weeks. *Id.* at 114–15. The DOE Psychologist additionally opined that the Individual had “an emotional condition that can impair his judgment and reliability.” *Id.* at 115. The DOE Psychologist characterized the emotional condition as follows:

Specifically, his impulsivity consistently impairs his behavior while operating a motor vehicle, continues to get him in trouble with the law. He does not seem to connect the degree to which he continues to put himself or other people in danger, and there is no evidence that he has learned from his driver education courses.

Id. The DOE Psychologist recommended that the Individual address this condition through “outpatient counseling/therapy” without any indication as to the nature or duration of the proposed treatment. *Id.*

On January 27, 2024, the Individual provided a sample to a laboratory for drug testing. Ex. D at 16. The results of the test were negative for traces of drugs measured by the test, including cannabinoids. *Id.*

The Individual met with a psychologist (Individual’s Expert) for a psychological evaluation in connection with this proceeding on January 30, 2024. Ex. J at 1. The Individual’s Expert noted that the Individual had not received counseling as recommended by the DOE Psychologist and referred the Individual to a psychologist (Individual’s Psychologist) to complete the counseling.⁶ *Id.* at 1–2. The Individual participated in twelve alcohol-related counseling sessions with the Individual’s Psychologist beginning on February 8, 2024, and ending on March 13, 2024. Ex. A at 3. Following completion of the counseling, the Individual’s Psychologist prepared a letter in which he stated that the Individual “completed treatment without issue or complication” and opined that the Individual “does not require ongoing therapy.” *Id.*

The Individual met with the Individual’s Expert again on March 21, 2024. Ex. J at 4. Based upon information provided to the Individual’s Expert by the Individual’s Psychologist, and the results of psychological testing administered by the Individual’s Expert, the Individual’s Expert referred

⁶ Although both the Individual’s Expert and Individual’s Psychologist are psychologists, only the Individual’s Psychologist provided treatment to the Individual. The Individual’s Expert provided an opinion to rebut the DOE Psychologist’s and made recommendations to the Individual for seeking treatment in connection with this proceeding.

the Individual to his primary care physician to discuss starting medication for Attention Deficit/Hyperactivity Disorder (ADHD). *Id.* at 6, 12. On March 22, 2024, the Individual's primary care physician prescribed him Adderall to treat the symptoms of ADHD. *Id.* at 6.

On March 26, 2024, the Individual met with the Individual's Expert again to complete the psychological evaluation. *Id.* The Individual told the Individual's Expert that he had not consumed alcohol since December 23, 2023, when he consumed five or six alcoholic drinks at a wedding, and that he had no intention of resuming alcohol use. *Id.* at 7. The Individual explained that he had not previously considered his alcohol use problematic, but that, in light of the DOE Psychologist's opinion and the effect that his alcohol use was having on his eligibility for access authorization, he had decided to discontinue alcohol use. *Id.* Regarding his marijuana use, the Individual denied having used marijuana since January 2023. *Id.* at 8.

On March 28, 2024, the Individual's Expert issued the results of the psychological evaluation. *Id.* at 13. The Individual's Expert opined that the Individual did not demonstrate any indications of a substance-related disorder. *Id.* The Individual's Expert further opined that the Individual's provision of inconsistent information during the adjudication of his eligibility for access authorization was likely the product of impairments to his attention to detail from ADHD. *Id.* The Individual's Expert indicated that the Individual's driving infractions were likely also attributable in part to the Individual's ADHD, which the Individual's Expert asserted could, in combination with the Individual's "high sensation seeking tendencies," cause him to act impulsively. *Id.* at 12–13. The Individual's Expert opined that the Individual's use of Adderall for ADHD, which the Individual reported was having positive effects, could address the Individual's lack of attention to detail and impulsivity that led to the security concerns. *Id.* at 13. Based on the Individual's compliance with treatment recommendations and the Individual's Expert's opinion that Adderall could control the behaviors that led to the security concerns, the Individual's Expert opined that the Individual's prognosis for managing the effects of his ADHD was excellent. *Id.*

The Individual testified at the hearing that he began abstaining from alcohol following receipt of the DOE Psychologist's recommendations in late December 2023, and that he had not consumed any alcohol since that time. Tr. at 26, 28; *see also* Tr. at 83–84 (representing that he previously abstained from alcohol from approximately August 2023 to October 2023 as part of a health and wellness challenge he participated in with friends); Ex. L (reflecting text message between the Individual and his friends concerning his abstinence from alcohol as part of the health and wellness challenge). The Individual indicated that he had observed physical and mental benefits from abstaining from alcohol, and that he had no intention of resuming alcohol consumption. Tr. at 28, 83. The Individual indicated that his family has supported his decision to abstain from alcohol, and that he has not experienced any difficulties abstaining from alcohol at familial gatherings where he would have consumed alcohol in the past. *Id.* at 28–30.

The Individual testified at the hearing that he would not engage in speeding in the future because, due to the consequences of his May 2023 Reckless Driving offense, he "cannot afford another one unless [he] want[s] to sell [his] car and take public transportation for the rest of [his] life." *Id.* at 36 (noting that he was issued "a hefty ticket" and his parents removed him from their auto insurance). However, the Individual acknowledged that he had not operated a motor vehicle since October 2023 as a result of his license having been suspended. *Id.* at 86–87. The Individual

attributed his history of traffic infractions to his enthusiasm for motor vehicles, noting that auto racing is one of his hobbies. *Id.* at 50–51; *see also* Ex. J at 5 (telling the Individual’s Expert that he “knew how to drive fast and maintain control” when he committed the traffic offenses “so [he] wasn’t reckless about it”).

Since being prescribed Adderall, the Individual reported having experienced less fidgeting and a greater ability to focus than before he began using the medication. Tr. at 38. In light of his perception that the Adderall has been “pretty beneficial,” with no side effects, the Individual intends to continue using the medication as prescribed in the future. *Id.* at 39. The Individual indicated that he had not had an opportunity to observe whether the Adderall would be beneficial to him at work but noted that no one in his supervisory chain had ever expressed concerns regarding his diligence or accuracy in completing assigned work prior to his being prescribed Adderall. *Id.* at 89–90.

The Individual testified that he accurately reported his alcohol consumption to the best of his knowledge on each occasion he was asked, but that his alcohol consumption changed between each date. *Id.* at 41–42. He represented that he had also reported his marijuana use to the best of his recollection on each occasion he was asked. *Id.* at 42–45. The Individual testified that he misread the question on the QNSP concerning his purchase of marijuana, which he believed was related to drug dealing based on his focus on the “more glaring and harmful words in that question.” *Id.* at 47–48. He also testified that he believed that he was not required to disclose his marijuana-related charge because the charge was dropped and he never appeared in court. *Id.* at 56. Regarding his failure to accurately report his 2021 reckless driving charge on the QNSP, the Individual testified that he thought that he did not have to report the arrest because the charge had been reduced. *Id.* at 49. The Individual denied having experienced difficulties answering any questions on the QNSP accurately besides those cited by the LSO in the SSC. *Id.* at 88–89.

The Individual testified that he had not used marijuana since January 2023 and does not plan to ever use it again. *Id.* at 45. He indicated that the potential impacts of marijuana use on his career were not worth continuing to use it. *Id.* at 46. The Individual denied that anyone currently uses marijuana in his presence. *Id.* The Individual also testified that he had an adverse reaction after using LSD in February 2021 and denied ever having used LSD since. *Id.* at 57.

The DOE Psychologist testified that he based his finding that the Individual had an emotional condition on the Individual’s history of “driving infractions that he did not seem to be learning from” *Id.* at 105. The DOE Psychologist indicated that he had relied solely on his clinical judgment, and not on any written psychological authority, such as the *DSM-5*, in reaching this conclusion. *Id.* at 145–46. He denied that he had ever previously concluded that a person he had evaluated had an emotional condition based solely on behavior exhibited while operating a motor vehicle. *Id.* at 146–47.

The DOE Psychologist expressed skepticism as to the Individual’s diagnosis with ADHD given the lack of pervasiveness of the Individual’s symptoms, which appeared constrained to “things that have gotten him in trouble” without affecting other aspects of the Individual’s life such as his job performance or early childhood education. *Id.* at 107, 15; *see also* Tr. at 141–43 (denying having observed the Individual display physical signs of ADHD, such as fidgeting or struggling to stay

focused on task, during the clinical interview). According to the DOE Psychologist, who represented that he has evaluated patients for ADHD “almost every day . . . for years” in his practice, the Individual’s lack of difficulty in completing goal-related behavior was inconsistent with the common presentation of ADHD in his patients who often experience occupational or academic impairment. *Id.* at 143. The DOE Psychologist further opined that, even if the Individual was properly diagnosed with ADHD, the Individual’s treatment would not resolve his concerns because he was not certain that ADHD medication would address the Individual’s thrill-seeking behavior and because the Individual’s claimed responsiveness to financial consequences for his actions, such as fines and being removed from his parents’ auto insurance, suggested that ADHD-induced impulsiveness was not the cause of his driving behavior. *Id.* at 106, 11–12.

The DOE Psychologist indicated that the Individual complied with his alcohol-related treatment recommendations and that the Individual had demonstrated rehabilitation or reformation. *Id.* at 110, 44. The DOE Psychologist opined that the Individual’s “prognosis is good if he abstains” from alcohol use in the future. *Id.* at 144.

V. ANALYSIS

A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

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

- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The investigative records prepared by the Investigator indicate that he confronted the Individual with omissions from the QNSP, such as his 2021 reckless driving offense. While the Individual did volunteer his citation for possession of marijuana, the Investigator had already learned of the offense from the background investigation of the Individual and the Individual disclosed it only after being confronted by the Investigator with other omissions from the QNSP and offered another opportunity to fully disclose his history of arrests and citations. Ex. 4 at 72. Thus, the first mitigating condition is inapplicable. Adjudicative Guidelines at ¶ 17(a). The second mitigating condition is inapplicable because the Individual does not assert that he omitted information he was required to disclose from the QNSP on the advice of counsel or another representative. *Id.* at ¶ 17(b).

Turning to the third mitigating condition, several of the allegations asserted by the LSO under section III(A) of the SSC present serious concerns. The Individual's failure to disclose his citation for marijuana possession, his extensive history of purchasing marijuana and LSD, and his 2021 arrest for reckless driving on the QNSP withheld information important to the adjudication of the Individual's eligibility for access authorization.

According to the Individual's Expert, the Individual's ADHD might have impacted his ability to accurately respond to the questions on the QNSP and led to his traffic infractions. However, there is no indication that the Individual had difficulty answering any questions accurately on the QNSP except those concerning his illegal conduct. *Supra* p. 9 (testifying that he did not struggle to answer any questions on the QNSP except those cited by the LSO in the SSC). There is also no evidence that the Individual experienced any significant occupational or academic impairments as a result of ADHD. The DOE Psychologist testified that he found it unlikely that ADHD would have such limited effect on the Individual's functioning and not present itself in other aspects of the Individual's life. *Supra* p. 9. I found the DOE Psychologist's opinion on this issue more persuasive than the Individual's Expert's. For the Individual's ADHD to only significantly impair his functioning in completing select portions of the QNSP and when operating a motor vehicle seems more likely to be an excuse for the Individual's behavior than a genuine impairment. Accordingly, I am not convinced that the Individual's ADHD constitutes a unique circumstance that prevented him from accurately completing the QNSP. As the Individual submitted the QNSP relatively recently, omitted numerous pieces of relevant information, and did not establish the presence of a unique circumstance that prevented him from accurately completing the QNSP, I find that the LSO's allegations are not mitigated under the third mitigating condition. Adjudicative Guidelines at ¶ 17(c).

Likewise, the illegal conduct cited by the LSO under section III(B) of the SSC concerned a lengthy pattern of significant misconduct that continued up to the Individual's May 2023 arrest for reckless driving. The Individual suggested that this pattern of misconduct was due in part to normal

experimentation and rule violations one might expect from a college student. I do not agree that the Individual's extensive record of rule violations is consistent with ordinary college experimentation. Moreover, the Individual's assertion that his illegal conduct was the product of youthful experimentation which will discontinue now that he has entered the professional world is unconvincing because the Individual began using alcohol and drugs illegally before he began attending college and his most recent reckless driving offense occurred three months after he submitted the QNSP while his eligibility for access authorization was being adjudicated. As the Individual's unlawful conduct predated his college attendance and continued after he should have been aware of the expectations for a clearance-holder, I find that his conduct is better explained as immaturity and a lack of judgement than the influence of the college atmosphere. On balance, I find that the Individual's rule violations are too recent, and there is too little evidence that he has matured and changed since his graduation from the University in the past year, for me to conclude that his misconduct is unlikely to recur. Thus, the Individual has failed to establish the applicability of the third mitigating condition to these security concerns. *Id.*

For the reasons noted above, I am not convinced that ADHD adequately explains the Individual's failure to accurately respond to the questions on the QNSP or to comply with traffic laws. Therefore, I find that the Individual's treatment for ADHD is unlikely to alleviate the stressors, circumstances, or factors that led to the derogatory conduct. For these reasons, I find the fourth mitigating condition inapplicable. Adjudicative Guidelines at ¶ 17(d).

The fifth mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual engaged in activity that placed him at heightened vulnerability to exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is irrelevant to the facts of this case because the LSO's allegations did not rely on unsubstantiated information or sources of questionable reliability. *Id.* at ¶ 17(f). The final mitigating condition is inapplicable because the LSO did not allege that the Individual associated with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

For the aforementioned reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline G

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; or,
- (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's statements in response to the LOI, to the DOE Psychologist, and to the Individual's Psychologist and Expert all indicate that he habitually or binge consumed alcohol to the point of impaired judgment over the course of several years and did not significantly change his behavior until after receiving the SSC in December 2023. In light of this lengthy pattern of alcohol misuse, which did not end until approximately three months prior to the hearing, I find that the Individual's alcohol misuse did not occur sufficiently long ago, so infrequently, or under such unusual circumstances for the first mitigating condition to apply. *Id.* at ¶ 23(a).

While the Individual does not fully acknowledge that his prior pattern of alcohol use was maladaptive, he testified to recognizing improvements in his physical and mental wellness since beginning to abstain from alcohol and to his intention to avoid consuming alcohol in the future because he perceives that it is a barrier to obtaining access authorization and career growth. The DOE Psychologist testified at the hearing that the Individual's alcohol-related counseling with the Individual's Psychologist complied with his recommendations. Thus, the Individual has provided evidence of actions taken to overcome his alcohol misuse.

Although the Individual provided negligible evidence to support his testimony that he has abstained from alcohol since December 2023, I nevertheless find that the Individual has established the applicability of the second mitigating condition. In reaching this conclusion, I note that the DOE Psychologist did not recommend in his Report that the Individual abstain from alcohol or undergo alcohol testing. Moreover, the DOE Psychologist testified that the Individual had demonstrated rehabilitation and the Individual's Psychologist and Expert opined that the Individual did not warrant an alcohol-related diagnosis or treatment. In applying the mitigating conditions, I am required to, among other things, consider "[t]he nature, extent, and seriousness of the conduct." 10 C.F.R. § 710.7(c). In light of the relatively minor nature of the security concerns posed by the Individual's arrest for underage possession of alcohol and history of alcohol consumption, which the DOE Psychologist did not believe were sufficiently substantial to warrant abstaining from alcohol or undergoing alcohol testing, I find that the Individual's testimony is sufficient to establish a modified pattern of alcohol consumption. Thus, I find the second mitigation applicable. Adjudicative Guidelines at ¶ 23(b).

The Individual completed the counseling with the Individual's Psychologist and is not presently receiving alcohol-related treatment. Thus, the third mitigating condition is inapplicable to the facts of this case. *Id.* at ¶ 23(c).

The Individual completed the alcohol-related counseling recommended by the DOE Psychologist and, for the reasons stated in connection with the second mitigating condition, I find that the Individual has sufficiently established a pattern of modified consumption or abstinence in accordance with treatment recommendations. Thus, I find the fourth mitigating condition applicable. *Id.* at ¶ 23(d).

The Individual has established the applicability of two of the mitigating conditions under Guideline G and the DOE Psychologist opined that the Individual demonstrated rehabilitation from the alcohol misuse cited by the LSO in the SSC. Although the Individual's alcohol misuse was fairly recent, I find that the relatively minor nature of the Individual's alcohol misuse, the positive opinion of the DOE Psychologist, and the Individual's participation in counseling outweigh any concerns related to the recency of the Individual's alcohol misuse. For these reasons, I find that the SSC's allegations under Guideline G are resolved.

C. Guideline H

Conditions that may mitigate security concerns under Guideline H include:

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

Id. at ¶ 26.

The Individual began using marijuana as a minor and continued to do so for years, culminating in his using marijuana at least three times weekly for several years. The Individual's pattern of marijuana use, and the fact that he began regularly using marijuana prior to attending college,

indicates that he did not use marijuana so infrequently or under such unusual circumstances as to mitigate the security concerns. While the Individual claims that he has not used marijuana since January 2023, he has presented no evidence of this claim besides his testimony and a single drug test from January 2024. In light of the concerns noted under Guideline E concerning the Individual's failure to fully disclose derogatory information, and the duration and frequency of the Individual's marijuana use, I find that the Individual's testimony is insufficient in of itself to establish the last date of his marijuana use. Absent more definitive evidence of the last date of illegal drug use by the Individual, I cannot conclude that the Individual's illegal drug use occurred so long ago as to mitigate the security concerns. *Id.* at ¶ 26(a).

Turning to the second mitigating condition, the single drug test supplied by the Individual is insufficient to corroborate the Individual's claimed abstinence from drug use in light of his admittedly lengthy and frequent marijuana use in the past. Moreover, the Individual has not provided the signed statement of intent to abstain from illegal drugs specified in the second mitigating condition. Based on the lack of evidence supporting the Individual's claimed abstinence from illegal drugs and the Individual's failure to submit a statement of intent to abstain from illegal drugs, I find the second mitigating condition inapplicable. *Id.* at ¶ 26(b).

The third mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual abused prescription drugs. *Id.* at ¶ 26(c). The final mitigating condition is inapplicable because the Individual did not allege that he received drug treatment. *Id.* at ¶ 26(d). Accordingly, I conclude that the Individual has not resolved the security concerns under Guideline H.

D. Guideline I

Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

The Report indicates that the emotional condition identified by the DOE Psychologist is characterized by the Individual's impulsivity, as demonstrated by his speeding and reckless driving infractions. The DOE Psychologist asserted at the hearing that the Individual's illegal drug use and alcohol misuse also contributed to his opinion.⁷ Tr. at 147. Criminal conduct and substance abuse ordinarily cannot be invoked under Guideline I. *See id.* at ¶ 28(a) (indicating that behavior "not covered under any other guideline" may be used to establish an emotional, mental, or personality condition under Guideline I).

When questioned about what sources of authority he relied on in identifying this emotional condition, the DOE Psychologist indicated that he had relied on his subjective clinical judgment and that the condition in question was not defined in any source. *Supra* p. 9. He further indicated that he had not identified an emotional condition characterized exclusively by impulsive operation of a motor vehicle before. *Id.* The Individual's Expert denied that the Individual suffered from any emotional condition. Ex. J at 13.

I am unable to identify any specific elements of the emotional condition posited by the DOE Psychologist beyond the irresponsibility and impulsivity evidenced by the Individual's speeding and reckless driving. As these behaviors were cited by the LSO under Guidelines E and J, they cannot be asserted under Guideline I as behavior that may establish an emotional condition. Adjudicative Guidelines at ¶ 28(a). In light of the Individual's Expert's opinion that the Individual does not have an emotional condition that could impair his reliability, trustworthiness, or judgment, and the DOE Psychologist's failure to cite to any source of authority for the existence of such a condition beyond behaviors already covered under other guidelines, I find that there is no indication of a current problem. *Id.* at ¶ 29(e). Thus, I find that the security concerns asserted by the LSO under Guideline I are resolved.

E. Guideline J

Conditions that could 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

⁷ There is no indication of this consideration in the Report, and even if there was, it would not have affected my analysis of the DOE Psychologist's conclusions.

the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Id. at ¶ 32.

The Individual began using drugs and alcohol illegally at a young age, and subsequently committed a series of drug and traffic offenses on a relatively frequent basis for several years. The Individual's most recent reckless driving offense, for which he was jailed for 14 days, occurred within one year of the hearing. Notably, the Individual's driver's license has been suspended for a significant portion of the time since his arrest and he has not operated a motor vehicle since October 2023. Thus, he has had fewer opportunities to reoffend than he will after his driver's license is reinstated. The Individual's illegal conduct, which continued a pattern of imprudent, careless behavior on his part, is too recent for me to conclude that the passage of time alone mitigates the security concerns posed by the Individual's behavior.

The Individual asserts that his graduation from college and ADHD diagnosis establish a change in circumstances such that his unlawful conduct is unlikely to occur. I find neither argument availing. For the reasons noted above in my assessment of the security concerns under Guideline E, I am unconvinced that the Individual's unlawful conduct is attributable to youthful experimentation. Regarding the Individual's ADHD diagnosis and the assertion of the Individual's Expert that it might have contributed to the Individual's impulsivity and thus his criminal behavior, as described above, I am convinced by the DOE Psychologist's opinion that the lack of impairment to the Individual's functioning outside of operating motor vehicles and responding to the QNSP makes it highly unlikely that the Individual's ADHD is responsible for his criminal behavior. Thus, I am not convinced that treatment of the Individual's ADHD will significantly reduce the likelihood of his committing unlawful conduct in the future. For these reasons, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because the Individual has not asserted that he was pressured or coerced into committing unlawful conduct. *Id.* at ¶ 32(b). The third mitigating condition is irrelevant to the facts of this case because there is no dispute that the Individual committed the offenses alleged by the LSO. *Id.* at ¶ 32(c).

The Individual has presented evidence that he completed his undergraduate studies, has a positive employment record, and has contributed to his community by coaching youth sports, all of which can be evidence of rehabilitation for criminal conduct. However, the Individual engaged in some of the criminal conduct contemporaneously with his undergraduate studies and volunteerism. Thus, it is not apparent that the positive actions in which the Individual has engaged establish rehabilitation from his criminal conduct. Moreover, the Individual reoffended after numerous driver's education courses intended to modify his behavior and was still subject to the suspension of his driver's license from his most recent reckless driving offense as of the date of the hearing. Weighing the number of offenses the Individual has committed, the fact that he is still subject to a sentence imposed on him for his latest reckless driving offense, and the Individual's failure to correct his behavior after numerous prior

educational classes against the Individual's moderate evidence of rehabilitation, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 32(d).

Having determined that none of the mitigating conditions under Guideline J is applicable to the facts of this case, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, G, H, I, and J of the Adjudicative Guidelines. After considering all 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 Summary of Security Concerns under Guidelines G and I, but not the security concerns under Guidelines E, H, and J. Accordingly, I have determined that the Individual should not be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals