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In the Matter of: Personnel Security Hearing)
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Filing Date: January 30, 2024) Case No.: PSH-24-0055
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Issued: April 22, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

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

I. Background

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in December 2021. Exhibit (Ex.) 12. The Individual disclosed that he was charged with "[M]inor in [P]ossession of [A]lcohol" in 1985, when he "was at a party with other underage kids drinking beer." *Id.* at 75. He noted that the charge was subsequently dismissed. *Id.* He also disclosed that had been "charged with [P]ublic [I]ntoxication" in 1998. *Id.* at 76; Ex. 11 at 1; Ex. 10 at 4. The Individual stated that "someone called police" after he left a bar, and that the matter was resolved after he paid a fine. *Id.* Finally, the Individual disclosed that he was charged with Reckless Driving in 1999. Ex. 12 at 77; Ex. 11 at 2. He stated that he had consumed "a couple beers with dinner," but passed field sobriety tests after he was stopped by law enforcement. *Id.*

The Individual was charged with Driving While Intoxicated (DWI) and Open Container of an Alcoholic Beverage (Open Container) in February 2023.² Ex. 5 at 1; Ex. 10 at 2. The police report

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

² The police report indicates that the Individual was charged with DWI, and accordingly, the term DWI will be used throughout this decision, even though the SSC indicates that the Individual was charged with Driving Under the Influence (DUI). Ex. 5 at 1; Ex. 2 at 4.

noted that the Individual failed field sobriety tests, and that law enforcement personnel observed that the Individual had “glassy eyes[,]” “impaired [m]otor [c]oordination[,]” and “[i]mpaired [s]peech[,]” and that they smelled the “[o]dor of [a]lcoholic [b]everage[.]” *Id.* at 1–3. The police report also indicated that the Individual refused to submit to a breath alcohol test. *Id.* at 3.

The Individual appropriately reported the incident to DOE two days later. Ex. 4. He reported that on the day of the incident, his spouse, who was upset with him, pulled the car over as she was driving them both home following a party. *Id.* at 2. He stated that his wife then left their car, and he made the “decision to get in the driver’s seat to try and resolve the issue.” *Id.* He also reported that because he had inadvertently left an empty alcoholic seltzer can in the car, he was also “charged with having an open container[.]” *Id.*

The Local Security Office (LSO) subsequently asked the Individual to complete two Letters of Interrogatory (LOI), which he signed and submitted in March and April 2023. Ex. 7; Ex. 8. Following the April LOI, the LSO asked the Individual to undergo a psychological evaluation, which was conducted by a DOE-consultant psychologist (DOE Psychologist) in June 2023. Ex. 9. In July 2023, the DOE Psychologist issued a report (the Report), which indicated that the Individual consumes “more alcohol and more frequently than he reports, and at a level that could result in impaired judgement, stability, reliability, or trustworthiness.” *Id.* at 5.

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

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of four other witnesses. *See* Transcript of Hearing, Case No. PSH-24-0055 (hereinafter cited as “Tr.”). The Individual also submitted thirteen exhibits, marked Exhibits A through M. The DOE Counsel submitted fourteen exhibits marked as Exhibits 1 through 14 and presented the testimony of the DOE Psychologist.

II. Notification Letter

A. Guideline E

Under Guideline E, “[c]onduct 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.” Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could

raise a disqualifying concern is the “[d]eliberate omission, concealment, or falsification of relevant facts from any . . . personal history statement, or similar form used to conduct investigations, . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities[.]” and “[d]eliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to a[] . . . competent . . . mental health professional involved in making a recommendation relevant to a national security eligibility determination.” *Id.* at ¶ 16(a) and (b). Under Guideline E, the LSO alleged that:

- a) The Individual stated in the March LOI that he drinks four to six cans of beer or alcoholic seltzer “each time, or sometimes a mixed drink or two, four to five times per month.” Ex. 1 at 3. Based on the Phosphatidylethanol (PEth) test results of 168 ng/mL, the DOE Psychologist concluded that the Individual was “consuming an average of four or more drinks a day.” *Id.* Accordingly, the Individual either engages in periodic binge drinking episodes or consumes more alcohol than he reported. *Id.*
- b) When the Individual reported the 2023 incident, he also indicated that he had “been intoxicated four to six times in the last [twelve] months.” *Id.* In the March LOI, the Individual stated that he had “been intoxicated [fifteen to eighteen] times in the last [twelve] months.” *Id.*
- c) The Individual indicated in the March 2023 LOI that following his February 2023 arrest, he attempted to submit a blood alcohol content sample by blowing into a breathalyzer. *Id.* at 4. However, the police report indicates that that the Individual refused to provide a sample, “and would not take the test.” *Id.*
- d) The Individual stated in the March LOI that during the February 2023 incident, he moved into the driver’s seat to use the “hands-free” function to call his wife, but the police report indicates that the Individual was “observed [by law enforcement personnel] behind the steering wheel, with the vehicle in motion.” *Id.*

The LSO’s invocation of Guideline E is justified.

B. Guideline G

Under Guideline G, “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]” and “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]” *Id.* at ¶ 22(a), (d). Under Guideline G, the LSO alleged that:

- a) The Individual stated in the March LOI that he usually consumes four to six cans of alcoholic seltzer or beer four to five times per month, or “sometimes a mixed drink or two.” Ex. 2 at 2. He estimated that he must consume five to six cans of seltzer or beer “to become intoxicated” and that he “has been intoxicated [fifteen to eighteen] times in the last [twelve] months.” *Id.*
- b) The Individual reported that on the day of the February 2023 incident, he had consumed “a few mixed drinks” and became more “inebriated than he intended” after attending a party. *Id.* His wife, while driving them home that night, stopped the car after she became upset and got out. *Id.* The Individual moved into the driver’s seat, at which point, law enforcement personnel responded. *Id.* The Individual told law enforcement personnel that he had consumed alcohol and he submitted to and failed field sobriety tests. *Id.* The police report indicates an empty can of alcohol was found in the car, that the Individual was “observed to be behind the steering wheel with the vehicle in motion,” and that the Individual “refused a breathalyzer.” *Id.*
- c) The Individual disclosed in the QNSP that he had been charged with Public Intoxication in January 1998, after he left a bar and realized “he should not drive[.]” *Id.*
- d) The Individual disclosed in the QNSP that he had been charged with Minor in Possession of Alcohol in 1985, and that he was “drinking beer with others who were also underage.” *Id.*

The LSO’s invocation of Guideline G is justified.

C. Guideline J

Guideline J states that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” and that, “[b]y its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under Guideline J include “[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). Under Guideline J, the LSO alleged that:

- a) The Individual properly reported that he had been arrested and charged with DWI in February 2023. Ex. 2 at 4. The police report indicates that law enforcement personnel found an “open container” in the Individual’s car, that he “failed three sobriety tests,” and that he did not submit to a breathalyzer test. *Id.* The Individual was arrested. *Id.*
- b) The Individual disclosed in the QNSP that he had been arrested and charged with Reckless Driving in January 1999 when he exceeded the speed limit, following “a couple of beers with dinner[.]” *Id.* The Individual passed field sobriety tests on that occasion. *Id.*

- c) The Individual disclosed in the QNSP that he was charged with Public Intoxication in January 1998. *Id.*
- d) The Individual disclosed in the QNSP that he was charged with Minor in Possession of Alcohol in May 1985. *Id.*
- e) The Individual informed the DOE Psychologist that he consumed his first alcoholic beverage at age sixteen and would “occasionally drink beer at parties with friends.” *Id.*

The LSO’s invocation of Guideline J is justified.

III. Regulatory Standards

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

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting 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. Findings of Fact and Hearing Testimony

The Individual confirmed in his testimony that he was arrested and charged with Minor in Possession of Alcohol decades ago, after he shared some beer behind a grocery store with some friends. Tr. at 27, 29. The matter was dismissed following a court appearance. *Id.* at 27–28, 30. Regarding the 1998 Public Intoxication charge, the Individual testified that he had enjoyed a meal with some friends, and after having a few drinks, he left to go home. *Id.* at 31. While on his way to his car, he realized that he did not feel comfortable driving in his condition and decided to turn back around to try and secure a ride. *Id.* at 32, 34. At that point, he was stopped by law enforcement personnel and was placed under arrest after answering their questions. *Id.* at 34, 155–56. The Individual subsequently pleaded guilty and paid the accompanying fine. *Id.* at 36. Regarding the 1999 Reckless Driving charge, the Individual testified that he had consumed “two beers with

dinner” and “felt comfortable” driving. *Id.* at 37–38, 40. While on his way home, he exceeded the speed limit by approximately twenty miles per hour and was pulled over by law enforcement. *Id.* at 37, 40. He passed the field sobriety tests but was issued a ticket for Reckless Driving. *Id.* at 38, 41. The matter was resolved following a court appearance and his compliance with the orders that resulted. *Id.* at 42.

The Individual provided a narrative of the 2023 incident in the March 2023 LOI and in his testimony. The Individual stated that on the day of the incident, he drank an alcoholic seltzer before a party that was scheduled to begin that afternoon. Ex. 7 at 4; Tr. at 48–49, 54–55. As he was working on his car at the time, he “placed the empty can in the passenger side door.” Ex. 7 at 4; Tr. at 48–49, 54–55, 78–79. Later, while at the party with his spouse and family, the Individual consumed approximately three mixed drinks consisting of twelve to sixteen ounces per drink, over the span of “three and a half hours.” Ex. 7 at 4; Tr. at 44, 56–58. He testified that “[a]t that point, [he] switched to beer[,]” and he consumed a couple pints of beers over the span of one and a half hours.³ Tr. at 44, 60. The Individual decided he wanted to leave, and when he left the party approximately five hours after arriving, the Individual “was more inebriated than [he] intended” and his wife drove them home. Ex. 7 at 4; Tr. at 61–63. His wife was upset they were leaving because she wanted to stay and enjoy the evening out. Tr. at 44–45, 63–64, 150. On the way home, the Individual’s wife stopped the car on the side of the road in front of a car dealership and began walking away, as she was still upset. Ex. 7 at 4; Tr. at 45–46, 66–68, 150. As she had taken the keys with her, the car automatically beeped, at which point she walked back to the car to return the keys and walked away again. Ex. 7 at 4; Tr. at 46, 69–70. The Individual was worried for her safety, as it was dark and cold outside, so he moved into the driver’s seat and believed that he was using “hands-free function” to call his wife to ask her to return to the car.⁴ Ex. 7 at 4; Tr. at 46–47, 65–66, 71–72, 74, 130. It was at this time that law enforcement approached the Individual’s car and asked for his license and registration.⁵ Ex. 7 at 4; Tr. at 47, 72–74. The Individual stated that he informed the officer that his wife had been driving them home, and law enforcement asked the Individual to submit to field sobriety tests.⁶ Ex. 7 at 4; Tr. at 47–48, 74–75, 152. Following failed field sobriety tests, the Individual was arrested. Ex. 7 at 4; Tr. at 76. The Individual was taken to a local law enforcement location and asked to submit to a breath alcohol test. Ex. 7 at 4; Tr. at 49,

³ The Individual confirmed that he “just [was not] really tracking or planning [his] drinking then[,]” and that his failure to track his consumption was characteristic of his drinking back then. Tr. at 60–61.

⁴ The Individual also stated during his testimony that in order to use the “hands-free” function to call his wife, he had to put his foot on the brake and start the car, but he never put the car in drive. Tr. at 47, 72, 126–27. When asked why he did not use his cell phone to call his wife, the Individual stated that he felt the “hands-free” option “was a quick way” to call his wife. *Id.* at 151.

⁵ The Police Incident Report indicates that the responding officer noted that the Individual was “behind the steering wheel” with the “vehicle running, and vehicle in motion.” Ex. D at 3; Ex. 5 at 3; Tr. at 130. However, an email from the Individual’s attorney in the underlying criminal matter indicates that the attorney viewed the camera footage taken by law enforcement on that night and that the footage “show[s] the police pulling up to [the Individual] . . . in the driver’s seat with the motor running[,]” as the Individual stated. Ex. 3 at 24. The attorney went on to state that the police report indicates the car was in motion, but that the camera footage “[does not show] that [the officer] will testify to what he wrote down[,]” and that there is “room for reasonable doubt[.]” *Id.*

⁶ The officer noted the odor of alcohol and that the Individual “admitted to having a few beers and a couple drinks.” Ex. D at 3; Ex. 5 at 3.

77. The Individual indicated in the LOI that although he attempted to provide a sample, the machine “did not seem to be working.” Ex. 7 at 4; Tr. at 49, 80–81, 131. The Individual said that he attempted to comply with the breathalyzer but indicated at one point that he “[was not] sure that [he] wanted to try it again.”⁷ Tr. at 49–50, 82, 84–85. The Individual testified that he had already told the officer that he had been drinking, so there was no benefit in refusing to submit to a breath test and he did not know his statement indicating that he did not want to try to blow into the machine again was tantamount to a refusal. *Id.* at 125–26, 128. He was issued a citation for DWI and “consumption/open container.” Ex. 7 at 4; Tr. at 49, 85, 153–55. The Individual testified that his wife had returned to the vehicle and expressed her confusion to a law enforcement officer following the Individual’s arrest, as she was the person driving the vehicle. Tr. at 50, 153. His wife, brother, and his sister-in-law retrieved him from the location he had been detained. *Id.* at 51, 85–87, 197.

The Individual called his manager the following day to notify her of the incident, and he reported the incident upon his return to work. *Id.* at 51–52, 87. The Individual stated in the February 2023 incident report that he drinks between four to six beers when he does not have to work the next day, and that he typically drinks one to two “days or night” per week. Ex. 4 at 2; Tr. at 122. Lastly, he reported that including the February 2023 incident, he had been intoxicated four to six times within the past year. Ex. 4 at 2; Tr. at 137–39.

Following his 2023 charge, the Individual attended a victim impact panel and was assessed by the state Office of Alcoholism and Substance Abuse Services in February 2023. Ex. 7 at 4; Ex. 3 at 2; Ex. E; Tr. at 93; Ex. 8 at 4. A Licensed Mental Health Counselor conducted an assessment and concluded that the Individual “does not present with any clinical concerns in reference to his alcohol use” and that the February 2023 incident was “an isolated incident as opposed to indication of concern with his alcohol use.”⁸ Ex. E at 4; Ex. 8 at 7. Accordingly, no treatment was recommended. Ex. E at 4; Ex. 8 at 7. The Individual also began the Impaired Driver Program in July 2023, completing the program in September 2023. Ex. 3 at 11; Tr. at 93–94. The Individual resolved the criminal matter in June 2023 and paid a fine. Ex. C; Ex. F; Ex. 6; Tr. at 87–93.

The Individual indicated in the March 2023 LOI that he typically consumes about four to six cans of beer or alcoholic seltzers, and that occasionally, he consumes a “mixed drink or two instead.” Ex. 7 at 5. He went on to state that he consumed alcohol on Friday and Saturday nights, approximately four to five times in a month. *Id.* He also indicated that he must consume about five to six cans of beer or seltzer to reach a state of intoxication, and that he typically becomes intoxicated “[m]aybe twice a month.” *Id.* at 6. He estimated that he was intoxicated about fifteen to eighteen times in the past twelve months. *Id.* At the hearing, he confirmed the characterization that he is a “mostly . . . weekend drinker[,]” and acknowledged that his alcohol consumption had increased in the “couple years leading up to the” 2023 incident. Tr. at 101–02. Regarding the discrepancy in the amount he stated he was drinking between the LOI and the incident report, the

⁷ It also indicated that the Individual refused to submit to a breath test, and that the Individual “stated [that] he did not trust [the device] and would not take the test.” Ex. D at 3; Ex. 5 at 3; Tr. at 131.

⁸ The Impaired Driver Clinical Assessment Form also notes that the Individual “complied with all of the field sobriety tests[,]” and “complied with the breathalyzer at the station . . . which he attempted a few times.” Ex. 8 at 4.

Individual testified that he clearly “[did not] understand what intoxicated mean[t].” *Id.* at 123. He said that he thought “intoxicated means drunk,” but later decided that intoxication meant “feeling the effects of alcohol.” *Id.* At the time of the hearing, he understood that intoxication meant a “marked effect on physical or mental . . . ability or acuity,” so he felt that it was “more accurate to say that he would become intoxicated four to six times in twelve months.” *Id.* at 123–24.

During the psychological evaluation, the Individual told the DOE Psychologist that he first drank alcohol at the age of sixteen. Ex. 9 at 2. The Report also indicates that the Individual “denied drinking alcohol during the week, and he might drink four or five beers in the evening on the weekend.” *Id.* The Individual also told the DOE Psychologist that “he might drink to the point of intoxication once every two or three months.” *Id.* Two laboratory tests for alcohol use were conducted in conjunction with the psychological evaluation, an Ethyl Glucuronide (EtG) test and a PEth test. *Id.* at 3. The EtG test was negative, indicating it was “unlikely that [the Individual] had consumed significant amounts of alcohol within the [ninety-six] hours prior to the test.” *Id.* The PEth test was positive and registered at 168 ng/mL. *Id.* Based on these results, the DOE Psychologist concluded that the Individual was drinking four “drinks or more per day.”⁹ *Id.* The DOE Psychologist went on to opine that the Individual’s consumption is “excessive” and that he is either “unaware of how much and how often he consumes alcohol, or that he is not forthcoming about his alcohol intake.” *Id.* at 4. At the hearing, the DOE Psychologist stated that the Individual was either drinking about four drinks per day, or “drinking episodically at a level that would” result in PEth test values equivalent to consuming four drinks per day. Tr. at 235.

The Individual testified that at the time he met with the DOE Psychologist, he was consuming alcohol on Friday and Saturday nights, drinking approximately “five to six seltzers or beers.” *Id.* at 103. He said that about every other month, he “might have eight or ten [drinks] or have five or six seltzers and then have a mixed drink[.]” *Id.* The Individual denied consuming alcohol on weekdays. *Id.* at 104. He would make the mixed drinks himself and would approximate the amount of alcohol he would pour into each glass. *Id.* at 105–06.

As indicated above, the DOE Psychologist concluded that the Individual consumes “more frequently than he reports, and at a level that could result in impaired judgment, stability, reliability, or trustworthiness.” Ex. 9 at 5. The DOE Psychologist opined that the Individual had not shown adequate evidence of rehabilitation or reformation, and that in order to show adequate evidence of such, the Individual should abstain from alcohol for six months. *Id.* The DOE Psychologist also recommended that the Individual provide evidence of his abstinence by submitting to PEth tests “every two months” and that he participate in an outpatient treatment program (IOP) and complete the IOP recommended aftercare. *Id.* As an alternative to an IOP, he stated that the Individual may participate in a program like Alcoholics Anonymous (AA) for a minimum of six months. *Id.*

In his request for a hearing, the Individual indicated that he “did not intentionally mislead [the DOE Psychologist]” as he “[did not] feel there was any need or advantage in misleading” him. Ex. 3 at 2. The Individual testified that he never tried to deceive the DOE Psychologist, and that he

⁹ There is no indication in the Report that the DOE Psychologist had the PEth test results interpreted by a medical doctor or some other qualified professional. The DOE Psychologist’s curriculum vitae also does not indicate that he is a medical doctor or otherwise specially qualified to interpret PEth test results. Ex. 14.

simply was not in the habit of keeping track of how much he was drinking. *Id.* at 107, 109–110, 120–22. Further, he admitted during the hearing that he had engaged in habitual or binge drinking in the past, but disagreed with the DOE Psychologist’s conclusion that he was drinking four drinks per day, as he never drank on weekdays *Id.* at 108, 111, 120–21.

The Individual submitted to a biopsychosocial assessment in March 2024 with a provider.¹⁰ Ex. B. The Individual recounted the events of February 2023 to the provider in a manner consistent with what he disclosed in the March LOI. *Id.* at 1. He explained to the provider that “he realized that he drank too much on occasion and was not really tracking his consumption.” *Id.* at 2. Accordingly, the Individual developed a plan to track his alcohol consumption and noted reduced drinking from August 2023 to December 2023 pursuant to the plan.¹¹ *Id.* While the Individual recounted a history of moderate alcohol consumption, he admitted that his consumption had increased in the 2021 to 2023 period. *Id.* During this period, the Individual was consuming four to six drinks on Fridays and Saturdays, and occasionally consuming up to eight “drinks in a setting.”¹² *Id.* The Individual also told the provider that he had been abstaining from alcohol since February 2024. *Id.* The provider stated in the findings of the report that he produced in March 2024 that the Individual’s “use shows no current patterns of alcohol abuse” and he opined that the Individual suffers from AUD, Mild, in sustained remission. *Id.* at 6. The provider did not recommend treatment but suggested continued one-on-one therapy. *Id.*

The Individual began seeking one-on-one therapy in late December 2023. Ex. 3 at 12–20; Tr. at 118. At the time of the hearing in March 2024, the Individual had attended five sessions. Tr. at 141. He testified that his therapist approved of the way he was approaching the matter of reduced consumption and offered him some techniques he can use in social situations to resist peer pressure. Tr. at 118–19, 142–43, 145–46, 163. He testified that his therapist, his mother, his son, and brothers and sisters are all part of his support system. *Id.* at 165–66.

The Individual submitted to two PEth tests in addition to the one administered at the behest of the DOE Psychologist, the first in January 2024 and the second in March 2024. Ex. 3 at 21; Ex. A. The January PEth test indicated “moderate to heavy” alcohol consumption and the March PEth test was negative. Ex. 3 at 21; Ex. A. He testified that he last consumed alcohol on February 6, 2024, and denied experiencing any withdrawal symptoms. Tr. at 111–12. He said that his therapist feels that abstinence may be more difficult for him to maintain when compared to reduced consumption, but the Individual did not endorse any difficulty remaining abstinent. *Id.* at 142–43. He indicated that his overall health has improved since he stopped drinking. *Id.* at 112–13; Ex. G; Ex. B at 2. He stated that it is his intention to continue abstaining from alcohol, as he does not “have any intention to drink anytime in the near future.” Tr. at 113–14. He could not state with

¹⁰ The record does not contain this provider’s curriculum vitae, but the record indicates that the provider is a Licensed Clinical Social Worker and Credentialed Alcoholism and Substance Abuse Counselor. Ex. B at 6. The record also indicates that the provider administered an alcohol screening questionnaire, a substance abuse screening tool, and the Michigan Alcoholism Screening Test. *Id.* at 7–11.

¹¹ The Individual limited himself to consuming alcohol on weekends, and no more than four alcoholic drinks “on any occasion.” Ex. B at 2.

¹² At the hearing, the Individual testified that he would drink eight or more drinks “four to six times” per year, “maybe once every other month.” Tr. at 140.

certainty that he would remain abstinent for the rest of his life. *Id.* at 114. Prior to his abstinence, he had reduced his alcohol consumption, and his wife helped keep him accountable in that respect. *Id.* at 115–17. At the hearing, the DOE Psychologist acknowledged the changes that the Individual had made, including his decision to stay abstinent, but he did not find that the Individual had shown adequate evidence of rehabilitation or reformation. *Id.* at 240–42, 248–50, 252–54, 256–57. The DOE Psychologist indicated that in order for the Individual to establish adequate evidence of rehabilitation or reformation, the Individual would have to comply with his recommendations, in that he would have to remain abstinent for six months, continue counseling, and submit to regular PEth testing. *Id.* at 253–54.

The Individual’s wife testified that prior to reducing his consumption in August 2023, Individual would drink between six to eight drinks on the weekends. *Id.* at 176. She was never concerned by her husband’s alcohol consumption and said it was “a social thing.” *Id.* at 177. She confirmed in her testimony that on the night of February 2023, she was “spitting fire” and was angry because she wanted to stay out longer, and her husband wanted to leave. *Id.* at 178–80, 196. So, she was complaining on the drive home, and decided to pull the car over because she “needed to take a few minutes.” *Id.* at 180–82, 194–95. She threw the keys back in the car so the Individual could stay warm. *Id.* at 181, 193. When she returned to the car after the Individual’s arrest and spoke to the officer responsible for calling for a tow truck, he told her that the Individual was likely arrested for DWI, to which she responded that was it impossible, “because [her] car [had not] moved.” *Id.* at 183. She confirmed that the Individual had reduced his consumption and stopped drinking altogether in February 2024. *Id.* at 183–84, 187–88, 196.

The Individual’s mother confirmed in her testimony that, regarding the Guideline E allegations, it would be “out of character for her son to lie to the government[.]” *Id.* at 202, 204–05. The Individual’s mother-in-law confirmed this belief in her testimony as well. *Id.* at 213–14. The Individual’s mother, who was at the party the Individual attended on the night of the February 2024 incident, did state that she had seen him drink more than he should on that night but has not seen him drink since then. *Id.* at 205–08. The Individual’s son testified that he never found the Individual’s alcohol consumption to be problematic, and since February 2024, he has only seen his father consume one drink. *Id.* at 222–23.

V. Analysis

A. Guideline E

The Adjudicative Guidelines provide that 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.

Regarding the allegation that the Individual was not forthcoming during the psychological evaluation, I cannot conclude that Guideline E applies to this specific allegation. First, the allegation that the Individual deceived the DOE Psychologist rests on the assertion that he had underreported the amount he consumed when compared to the DOE Psychologist's interpretation of the PEth test results. While I can accept that the PEth results reveal that the Individual consumed alcohol, I cannot accept the DOE Psychologist's interpretation of the results, as there is nothing in the record that indicates that he is qualified to interpret PEth test results. For the previously stated reasons, Guideline E is not applicable to this specific allegation.

As an initial matter, I believe that the Individual provided truthful and credible testimony. Regarding the allegation in paragraphs (c) and (d) of the SSC, which pertain to the alleged inconsistencies in his statements concerning his attempts to provide breath samples and whether the car was moving at the time law enforcement responded to the scene in February 2023, the Individual fully acknowledged that he had been intoxicated, that he moved into the driver's seat, that he turned the car on, and that he admitted as much to law enforcement. This version of events was consistent throughout the record and was also corroborated by the emails he exchanged with his attorney in the underlying criminal matter. He also explained that he attempted to submit a breath test, as refusing to do so was pointless because he had already told law enforcement personnel that he had been drinking and he had failed field sobriety tests. Regarding the allegations in paragraph (b), which pertain to the statements he made in the incident report and the March LOI regarding how frequently he becomes intoxicated, the Individual testified he had made those estimates based on a change in his understanding of what it means to be intoxicated. I believe the

Individual was attempting to be as precise as he possible could in the context of his understanding of what it means to be intoxicated. There is no indication before me that the Individual presented discrepant information with any intent to deceive.

Accordingly, I do not find that there was a “[d]eliberate omission, concealment, or falsification of relevant facts” in the March 2023 LOI and incident report, or that the Individual “[d]eliberately provided false or misleading information” to the DOE Psychologist. Adjudicative Guidelines at ¶ 16 (a) and (b).

B. Guideline G

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

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

First, the Guideline G concerns include an allegation from approximately forty years ago when the Individual was a minor. I have not considered the alleged behavior described in paragraph (d) of the SSC as part of the Individual’s concerning alcohol-related behavior. *See* 10 C.F.R. § 710.7(c) (requiring me to consider, among other factors, “the age and maturity of the individual at the time of the conduct”).

Although the 2023 incident took place over a year ago, the Individual has a history of some involvement with law enforcement following the consumption of alcohol. While it would have prudent for the Individual to stop drinking immediately following the 2023 incident, as this was the most severe incident and the Individual held an access authorization at the time of the incident, he continued consuming alcohol until February 2024. Although the Individual has acknowledged that he engaged in the habitual or binge consumption of alcohol in the past and started modified consumption in an attempt to address the issue, the record reveals that he has only been abstinent

since February 2024. While the provider the Individual engaged in March 2024 provided the Individual with a diagnosis, AUD, Mild in sustained remission, he was not made available to testify under oath and was not subject to cross examination. Additionally, as stated above, the provider conducted several tests. Ex. B at 7–15. An examination of the Individual’s responses to these various tests clearly indicates that the tests captured the nature of his consumption during the August 2023 period and after, when he had reduced his consumption and started abstaining. *Id.* His responses do not reflect how much he was consuming around the February 2023 period, which naturally, would not present a complete picture to the provider. *Id.* As the provider diagnosed the Individual with AUD, Mild in sustained remission, he did not recommend substance use treatment. The DOE Psychologist also did not find any evidence of alcohol use disorder, but as the Individual had a history of engaging in habitual or binge consumption of alcohol, the DOE Psychologist recommended, among other things, six months of abstinence. While I cannot accept the DOE Psychologist’s interpretation of the PEth test results, I can agree that because the Individual admitted to the problematic consumption of alcohol and has experienced legal entanglements due to his consumption, the Individual should remain abstinent for some period of time. I only have evidence of almost two months abstinence before me. A more substantial period of abstinence, like the recommended six months, along with the recommended AA or IOP participation, would have strongly signaled a break in the pattern of problematic consumption and behavior that has spanned years. Lastly, the DOE Psychologist testified that the Individual has not shown adequate evidence of rehabilitation or reformation.

As the Individual’s consumption increased noticeably in the past few years and he only began abstaining approximately two months prior to the hearing, I cannot conclude that enough 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 pursuant to mitigating factor (a).

While the Individual acknowledged that his past consumption was problematic, he has not fully implemented the DOE Psychologist’s recommendations by remaining abstinent for at least six months, participating in treatment or AA, and submitting to regular PEth testing. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (b).

The Individual is not participating in a treatment program, and I have no evidence that he completed a treatment program. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (d). Although I have evidence that the Individual is participating in counseling and while he did testify that his therapist has provided some appropriate feedback, I do not have any corroborating evidence or specific information regarding the Individual’s progress. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (c).

C. Guideline J

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

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

Adjudicative Guidelines at ¶ 32(a)–(d).

The Guideline J concerns include an allegation from when the Individual was a minor. I have not considered the criminal charge described in paragraph (d) of the SSC as part of the Individual's concerning criminal behavior. *See* 10 C.F.R. § 710.7(c) (requiring me to consider, among other factors, “the age and maturity of the individual at the time of the conduct”).

The criminal acts alleged in the SSC are inextricably intertwined with the Individual's alcohol consumption. Although the Individual has remained abstinent since February 2024 and has been to at least five sessions of one-on-one therapy, he has not taken enough action to resolve the concerns associated with his habitual binge drinking, and accordingly, I do not have enough information before me to allow me to conclude that he has remedied the alleged behavior that resulted in the 2023 arrest and charge. As the last alleged act occurred in February 2023 and the underlying behavior has not been resolved in a satisfactory manner, I cannot conclude that enough time has passed or that it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the Individual's current reliability trustworthiness, or good judgment. Therefore, the Individual has not mitigated the stated concerns pursuant to mitigating factor (a).

While the record indicates that the Individual has taken steps to bring the underlying legal concerns to an appropriate conclusion, not enough time has passed since the last incident of criminal activity when taken in the context of the years that passed between the 1999 incident and the 2023 incident. I have no information before that indicates the Individual has participated in constructive community involvement or continued job training or achieved higher education after the February 2023 incident. I have no specific information before me pertaining to the Individual's employment record. Accordingly, while the criminal matters have been resolved, I cannot conclude that the Individual has shown adequate evidence of successful rehabilitation pursuant to mitigating factor (d).

I have no information before me that the Individual was coerced into committing the act, and the Individual never alleged that there was no reliable evidence to support that he committed the offense. Accordingly, the mitigating factors at (b) and (c) are not applicable in this case.

VI. Conclusion

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

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals