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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 8, 2023) Case No.: PSH-24-0027
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Issued: May 22, 2024

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “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

On January 12, 2018, and on August 8, 2023, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO). Exhibit (Ex.) 9 at 42; Ex. 10 at 1. Both QNSPs asked the Individual: “**In the last seven (7) years**, have you illegally used any drugs or controlled substances?” Ex. 9 at 42; Ex. 10 at 37 (emphasis in original). The Individual responded “no” to this question in both her QNSPs. Ex. 9 at 42; Ex. 10 at 37.

On June 29, 2023, police arrested the Individual and charged her with Driving Under the Influence (DUI). DOE Order 472.2A required that she report this arrest to the LSO. DOE Order 472.2A, Attachment 5 at § 6(a). On July 6, 2023, the Individual completed and sent a Personnel Security Information Reporting Form (PSIRF) to the following email address: “IncidentsReportsWaivers@nnsa.doe.gov.” Ex. A at 1. The correct email address for the submission of a PSIRF was “IncidentReportsWaivers@nnsa.doe.gov.”² Ex. B at 3. The LSO accordingly did not receive her report of this arrest.

¹ Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

² The email address used by the Individual contained an extra “s”.

A “Rap Back Alert”³ informed the LSO of the Individual’s June 29, 2023, DUI arrest. Ex. 5 at 1. The LSO subsequently issued a Letter of Interrogatory (LOI) to the Individual on July 24, 2023. Ex. 6 at 10. The LOI asked the Individual several questions concerning her DUI arrest. The Individual’s response to the LOI stated that she had consumed two glasses of wine and two shots of tequila over a six-hour period on the night of her DUI arrest. Ex. 6 at 1. The Individual reported that her blood alcohol concentration (BAC) was .16%. Ex. 6 at 3. The Individual further stated that since February of 2020, she had been consuming “up to 1-2 glasses of wine per week.” Ex. 6 at 4. The Individual indicated that she did not believe she had a problem with alcohol. Ex. 6 at 6.

The LOI also asked the Individual to “Explain why you did not report this arrest/charges in compliance per DOE’s Reporting Requirements.” Ex. 6 at 7. The Individual denied deliberately trying to conceal her arrest from the LSO, stating: “On July 6th, I contacted the Information and Personnel Security Division . . . for instructions on how to properly self report.” Ex. 6 at 7–9. The LOI also asked the Individual: “Have you ever intentionally falsified, omitted, or misrepresented any other information in the security clearance process, such as on security questionnaires, or statements to an investigator?” The Individual responded by stating “No.” Ex. 6 at 8.

The LSO requested the Individual to undergo a psychological examination by a DOE-contracted psychologist (the Psychologist). On September 7, 2023, the Psychologist conducted a clinical interview (CI) of the Individual. Ex. 7 at 2. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s personnel security file, administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI) to the Individual, and had her undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 7 at 2. The Individual’s PEth test was positive at a level of 110 nanograms per milliliter (ng/mL). Ex. 7 at 5. The Individual’s MMPI results did not indicate elevations on any clinical scales. Ex. 7 at 6. The Psychologist issued a report of her findings (the Report) on September 21, 2023, in which she found that the Individual did not meet the criteria for Alcohol Use Disorder (AUD) set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition - Text Revision (DSM-5-TR). Ex. 7 at 4. However, the Psychologist noted that she believed that the Individual’s self-reports about the level of her alcohol consumption were unreliable and that her PEth test results “were consistent with ongoing, habitual, binge drinking.” Ex. 7 at 5–6. Accordingly, the Psychologist concluded that the Individual “engages in habitual binge consumption of alcohol to the point of impaired judgment.” Ex. 7 at 6. The Psychologist further concluded that the Individual was neither reformed nor rehabilitated. Ex. 7 at 6. The Psychologist recommended that, in order to show that she was reformed or rehabilitated, the Individual: “should participate in a chemical dependency program of at least three months duration to achieve abstinence from alcohol. She should demonstrate that she can maintain abstinence by producing negative PEth tests monthly for a total of twelve months. The PEth tests should be at her own expense.” Ex. 7 at 6.

During the CI, the Individual made several statements to the Psychologist which raised questions about her judgement, reliability, and trustworthiness. First, the Individual stated that she had consumed four glasses of wine and two shots of tequila over a period of six hours on the night of

³ The DOE monitors security clearance holders’ arrest records as part of its continuous monitoring program.

her DUI arrest.⁴ Ex. 7 at 2. The Psychologist estimated this amount of alcohol should have resulted in a BAC of .05% rather than .16%. Ex. 7 at 2. The Psychologist further noted: “To produce a blood alcohol content of 0.16, she would have had to consume between six and seven drinks within an hour.” Ex. 7 at 2. Second, the Individual admitted that she had consumed a fifth of cognac twice weekly from May 2020 to July 2020. Ex. 7 at 3. Third, the Individual admitted that she had used cannabis and that her last use of cannabis occurred in 2017. Ex. 7 at 4. When the Psychologist asked the Individual why she had responded “no” to the questions in the QNSPs asking if she had used any drugs or controlled substances in the past seven years, the Individual responded by claiming that she did not remember being asked that question in the QNSPs. Ex. 7 at 4. These statements led the Psychologist to remark:

A concerning pattern arose regarding her minimizing and/or failing to disclose information that was potentially embarrassing or negative. This was seen in the discrepancies between what she reported in the LOI versus at the CI regarding her drinking behavior and in the [QNSP] versus the CI about her cannabis use. This raises a concern about her candidness and trustworthiness.

Ex. 7 at 4.

After receiving this information, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that it received derogatory information that created a substantial doubt regarding her eligibility to hold a security clearance and that she was entitled to a hearing before an Administrative Judge to resolve the security concerns. *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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual and the Psychologist. *See* Transcript of Hearing, Case No. PSH-24-0027 (hereinafter cited as “Tr.”). The DOE Counsel submitted eleven exhibits, marked as Exhibits 1 through 11. The Individual submitted the following thirteen exhibits, marked as Exhibits A through M.

Exhibit A consists of (1) a copy of a screen shot of a DOE PSIRF dated July 6, 2023, for the Individual indicating that she had been arrested, and indicating that the form should be submitted to incidentreportswaivers@nnsa.doe.gov, and (2) a copy of an email, dated July 6, 2023, submitting that form to incidentsreportswaivers@nnsa.doe.gov instead.

Exhibit B consists of a copy of an email chain, dated March 19, 2024 through March 20, 2024, between the Individual and incidentreportswaivers@nnsa.doe.gov in which the Individual stated “I mistakenly sent the form to incidentsreportswaivers@nnsa.doe.gov exactly 3 working days from the actual incident rather than the correct incidentreportswaivers@nnsa.doe.gov.” Ex. B at 3.

⁴ In her response to the LOI, the Individual had stated that she had consumed two glasses of wine and two shots of tequila over a six-hour period. Ex. 6 at 1.

Exhibit C is a character reference letter, dated February 9, 2024, from the Director of a Community Organization for which the Individual had volunteered for many years. The Director indicated that she has known the Individual for over twenty years and considered her to be “one of the most dedicated, hardworking and innovative people I’ve had the pleasure of working with in any capacity. She is also compassionate, kind and never misses the opportunity to help others.” Ex. C at 1.

Exhibit D is a character reference letter from the Individual’s Pastor who indicated he has known the Individual and her family since her teenage years. Ex. D at 1. The Pastor further described the Individual as “an excellent role model for those seeking a more active and rewarding relationship with God, . . . a person of good moral character, and as a bright spot in our congregation.” Ex. D at 1.

Exhibit E is a character reference letter from a PhD scientist coworker of the Individual. The scientist described the Individual as “self motivated” and a “great leader.” Ex. E at 1. She further described the Individual as “one of the most dedicated, hardworking and innovative people I’ve had the pleasure of working with in any capacity” and stated that she “can vouch for [the Individual’s] emotional intelligence, trustworthiness and approachability.” Ex. E at 1.

Exhibit F is a document indicating that the Individual had attended an online three-month DUI Program from November 28, 2023, through March 26, 2024. Ex. F at 1–2.

Exhibit G is a document indicating that the Individual had been admitted to an Intensive Outpatient Program (IOP) on March 4, 2024. Ex. G at 1.

Exhibit H is a letter, dated March 8, 2024, from the IOP indicating that the Individual’s insurance carrier had refused to pay for her IOP, despite the IOP’s Medical Director’s opinion that the Individual could benefit from substance abuse treatment, and that the Individual “has elected not to self-pay for treatment at our facility.” Ex. H at 1.

Exhibit I is a letter indicating that on April 4, 2024, the Individual had enrolled in an “online Alcohol and Other Drugs Awareness course” (the Online Course). Ex. I at 1.

Exhibit J is a copy of an email chain from February 1, 2024, in which the Individual tried to obtain PEth testing from her employer.

Exhibit K is a copy of a confirmation email for a PEth test requested by the Individual to be taken on March 26, 2024.

Exhibit L is a completion certificate for the Online Course dated April 22, 2024.

Exhibit M is a “Urine Chain of Custody Form” indicating that a blood specimen had been obtained from the Individual on April 29, 2024.

II. The Summary of Security Concerns (SSC)

The Summary of Security Concerns (SSC) attached to the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Under Guideline G, the LSO cites the Psychologist's conclusion that the Individual engages in habitual binge consumption of alcohol to the point of impaired judgment and the Individual's DUI arrest. This information adequately justifies the LSO's invocation of 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 "alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder" and "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." Adjudicative Guidelines at ¶ 22(b), (c).

The LSO also invoked Guideline E (Personal Conduct) of the Adjudicative Guidelines, citing the Individual's failure to report her DUI arrest to the LSO as required by DOE Order 472.2A; the Individual's false statements in her LOI; and the Individual's omissions of her cannabis use from two QNSPs. This information adequately justifies the LSO's invocation of 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. 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is the "[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities" and "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to a . . . competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative." Adjudicative Guidelines at ¶ 16(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 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 their eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Hearing Testimony

At the hearing, the Individual testified that she had attempted to self-report her DUI to the LSO on July 6, 2023. Tr. at 15–16. However, she testified, her failure to report was unintentional, since she had submitted the reporting form to the wrong email address. Tr. at 15. She further testified that she had not received any indications that her email had not been delivered. Tr. at 15–16.

The Individual testified that she was presently enrolled in a three-month DUI program. Tr. at 18, 51–53. She noted that she had completed the alcohol education component of that program. Tr. at 18. She testified that she started this three-month program in December 2023 and hopes to complete it in June 2024. Tr. at 18, 53. The Individual is also presently enrolled in an online therapy program to address her alcohol abuse, stress management, drug misuse, and anger management. Tr. at 54. There is no interactive component to this therapy program. Tr. at 54–57. The Individual testified that she intends to start receiving psychotherapy in the future. Tr. at 57. The Individual testified that she had enrolled in an IOP but chose to discontinue that program when her insurance provider denied her request for coverage on the grounds that it was not medically necessary. Tr. at 18. She testified that she could not afford to pay for the IOP. Tr. at 18. Instead, the Individual enrolled in a more affordable treatment program (ATP). Tr. at 18–19. She completed the ATP, which required 24 hours. Tr. at 20. The Individual testified that she is receiving pastoral counseling for her alcohol use, from the Pastor who prepared the letter appearing in the record as Exhibit D. Tr. at 59. She took a PEth test on April 5, 2024. Ex. 62. The result of this PEth test was positive. Tr. at 62. The level of PEth detected was “80.” Tr. at 81. She did not submit this test into the record of this proceeding because it was positive. Tr. at 63. She took another PEth test on April 29, 2024.⁵ Tr. at 63. She last consumed alcohol ten days before the hearing, when she attended a wine tasting and consumed several wine samples and a mimosa. Tr. at 63–64, 69. The Individual admitted she keeps wine in her home and has not cancelled any of her wine club memberships. Tr. at 64. When the DOE Counsel asked the Individual if she is following the Psychologist’s recommendation for abstinence, the Individual stated: “Yes. I’m not engaging in habitual binge drinking.” Tr. at 64–65. She then stated: “I don’t drink as much as I used to.” Tr. at 65. She then stated that she is trying to completely abstain from alcohol use. Tr. at 65. She then stated: “I am still working on it if I am being honest.” Tr. at 65. When she was asked about her “future plans with respect to alcohol” the Individual replied with a lengthy and confusing answer that did not indicate that she intends to permanently abstain from using alcohol. Tr. at 65–67. When she was asked this question again, she stated: “To stay away from high-stress-

⁵ The Individual has not submitted the results of the April 29, 2024, PEth test.

level situations that would otherwise encourage me to drink.” Tr. at 67. The Individual was then asked if she plans to continue to drink, to which she responded: “Not to binge, but to have alcohol -- a glass. Yes.” Tr. at 67. She then admitted that she consumed more than a glass on the last two occasions that she used alcohol. Tr. at 67. When the Individual was asked if she had a problem with alcohol she stated: “I used to. I do not anymore.” Tr. at 68. In support of that assertion, she stated that she is no longer bingeing and has reduced her consumption. Tr. at 68.

The Individual testified that on the night of her DUI, she went “overboard.” Tr. at 24. She ran over metal debris on the freeway and ran into the retaining wall. Tr. at 25. She then “blew a .16 into the breath analyzer and was taken to jail.” Tr. at 25–26, 43. She attributed this accident in part to her being very tired on that night. Tr. at 45. She testified that she had consumed about two and-a-half ounces of wine at a tasting; then a glass of wine with dinner; and then two shots of tequila and a glass of wine afterward. Tr. at 26. The Individual initially had no explanation for the discrepancy between her reported alcohol consumption provided during the LOI and the CI. Tr. at 27. The Individual eventually stated:

With the LOI I understand that I was under oath. I think at the time I was just trying to gather my thoughts. I was a bit nervous filling out the LOI, but I hadn't thought about the period of time in 2020 where I was drinking a little bit more than I normally drank during the time I was in a bad relationship. It was just for a couple months, if that, in 2020, where, of course, we were all in shelter in place, that I had been drinking excessively with a partner. But it was such a short period, did not mean to admit it, but I do -- I know sitting down with [the Psychologist] just gave me some more time to really think about how much I had been drinking, and I was honest with her about that.

Tr. at 28. She denied trying to put herself in a “good light” by providing inaccurate responses to the LOI. Tr. at 28. She testified that she was more forthcoming in the CI because she was more comfortable. Tr. at 28–29.

The Individual admitted that, during the CI, she had informed the Psychologist that her last use of marijuana occurred in 2017. Tr. at 35. She further admitted that she had omitted her marijuana use in 2017 from her 2018 and 2023 QNSPs. Tr. at 35. She claimed that these omissions occurred because she had “misread the question.” Tr. at 35. She then claimed that she had thought the question “said within a year,” when she filled out the QNSPs. Tr. at 35. The DOE Counsel then asked “isn't 2017 within a year of 2018?” Tr. at 35. The Individual responded by stating: “I didn't interpret it that way.” Tr. at 35. The Individual then claimed she told the Psychologist that her use of marijuana did not continue past 2017, and then claimed her last use of marijuana occurred in January 2017. Tr. at 36. She then claimed that her last use of marijuana occurred in 2016. Tr. at 36.

The Psychologist testified after observing the Individual's testimony. The Psychologist noted that after her evaluation, she did not diagnose the Individual with an alcohol disorder. Tr. at 72–73. Instead, she had concluded that the Individual had engaged in habitual binge drinking. Tr. at 73. She noted that at the CI, the Individual had denied the symptoms that would have shown that she met the criteria for AUD. Tr. at 74. However, the Psychologist stated that after observing the Individual's testimony, she is now of the opinion that the Individual meets the criteria for AUD.

Tr. at 74–75. In support of this conclusion, the Psychologist noted that the Individual testified that she: (1) drinks more than she intended, (2) has experienced cravings and urges to consume alcohol, (3) has unsuccessfully tried to reduce her alcohol consumption, (4) continues to engage in heavy drinking despite the impact on her work and the legal and financial consequences, and (5) continues to drink despite her knowledge of how it affects her stress and mood. Tr. at 75–76. The Psychologist also noted that it appears that the Individual has developed a tolerance to alcohol. Tr. at 76. The Psychologist noted that the Individual is not controlling her drinking, is consuming more than she is intending, is experiencing a significant impact on her occupational and social functioning, and that the Individual’s AUD is “really impacting [her] judgment.” Tr. at 78. She noted that she does not believe that the Individual is reformed or rehabilitated. Tr. at 86. The Psychologist opined that the Individual should abstain from using alcohol for at least one year to demonstrate reformation or rehabilitation. Tr. at 90. Finally, the Psychologist opined:

I -- it sounds to me like she’s not able at this point with the resources that she has to really manage that level of stress and would benefit quite a bit from receiving individual interactive psychotherapy with a lens toward both managing her use of alcohol and learning healthy ways, healthy and active ways, a whole cadre of ways to manage stress and respond to it in a -- in an adaptive, healthy way.

Tr. at 79.

V. Analysis

A. Guideline E

As an initial matter, I find that the Individual has resolved the security concerns raised under Guideline E by her failure to timely report her DUI to the LSO. The record shows that the Individual tried to file her PSIRF with the LSO on July 6, 2023, but added an extra “s” to the email address. Accordingly, I find that her failure to report was unintentional.

In contrast, I find that the record shows that the Individual intentionally failed to disclose her cannabis use in both her 2018 and 2023 QNSPs. The QNSPs both clearly asked: “**In the last seven (7) years**, have you illegally used any drugs or controlled substances?” The QNSPs both used boldface font to emphasize the time period to which the question applied. Yet the Individual prevaricated during the hearing by first claiming that she had misread the question and then claiming that she thought that the question was only referring to any drug use that may have occurred during the previous year.⁶ This prevarication indicates that the good judgment, reliability, trustworthiness, and honesty exhibited by the Individual during the CI when she self-reported her cannabis use to the Psychologist was short lived. Accordingly, I am convinced that the Individual intentionally omitted her cannabis use from both QNSPs and then continued to exhibit a lack of judgment, reliability, trustworthiness, and honesty at the hearing by providing deliberately misleading testimony.

⁶ I note that the Individual has received advanced degrees from two prestigious universities and is employed in perhaps the most intellectually challenging of professions.

The Individual's lack of judgment, reliability, trustworthiness, and honesty was not limited to her omissions of her cannabis use. Throughout this proceeding, the Individual has provided conflicting and contradictory information about her alcohol consumption. It is possible that the Individual's provision of false information relating to her alcohol use is symptomatic of her AUD. Moreover, the Individual's lack of candor about her alcohol use is often interrupted by the Individual's frank honesty about her drinking, perhaps indicative of her inner struggles with her alcohol issue. Since, as I will discuss below, the Individual's alcohol issues remain a concern, the Individual cannot be relied upon to provide accurate and complete information to DOE security. Moreover, the Individual's lack of candor concerning her cannabis use suggests her lack of judgment, reliability, trustworthiness, and honesty extends beyond matters concerning her alcohol use.

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline E, four of which are relevant to the present case.⁷ First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if they "made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Adjudicative Guidelines at ¶ 17(a). In the present case, the Individual did exhibit good faith by admitting her cannabis use during her CI. However, her cannabis omissions date back as far as 2018, so her admission does not qualify as prompt. Moreover, as discussed above, the Individual's lack of candor continued at the hearing, when her testimony concerning her omissions from the QNSP was not credible. Accordingly, I find that the mitigating condition set forth at ¶ 17(a) is not present in the instant case.

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if "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" and "[u]pon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully." Adjudicative Guidelines at ¶ 17(b). In the present case, there is no evidence in the record indicating that the Individual's omissions were caused or contributed to by the advice of legal counsel or some other professional. Accordingly, I find that the mitigating condition set forth at ¶ 17(b) is not present in the instant case.

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if "[t]he 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." Adjudicative Guidelines at ¶ 17(c). In the present case, the security concerns raised by Individual's omission of her cannabis use from her QNSPs were compounded by her contradictory and difficult to believe testimony at her hearing, therefore casting doubt on her present trustworthiness, reliability, and judgment.⁸ Accordingly, I find that the mitigating condition set forth at ¶ 17(c) is not present in the instant case.

⁷ The remaining mitigating factors under Guideline E, set forth at ¶ 17(e), (f), and (g), apply to circumstances other than the deliberate omission of information during the security clearance process.

⁸ During the hearing, the Individual did not address the inconsistencies in her reporting of her alcohol consumption.

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he 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.” Adjudicative Guidelines at ¶17(d). In the present case, the Individual has not acknowledged that she was intentionally attempting to conceal her cannabis use by omitting it from her QNSPs or that she intentionally minimized her alcohol consumption in her LOI response. Accordingly, I find that the mitigating condition set forth at ¶ 17(d) is not present in the instant case.

For these reasons, I conclude that the Individual has not resolved the Guideline E security concerns raised by the omission of her cannabis use from two QNSPs and her provision of inaccurate information concerning her alcohol use in her LOI. The Individual has, however, resolved any concerns arising from her failure to timely report her DUI to the LSO by showing that her failure to report was unintentional.

B. Guideline G

The Individual’s DUI and habitual binge consumption of alcohol to the point of impaired judgment have raised serious security concerns under Guideline G. Instead of resolving these issues, the Individual’s hearing testimony revealed that the Individual’s alcohol issues are more serious than the Psychologist originally found. The Individual did not fully comply with the Psychologist’s treatment recommendations and has not utilized any sufficient alternatives. Most importantly, the Individual continues to use alcohol in an uncontrolled manner and does not seem to fully realize the true extent of her alcohol problem, although she appears to be beginning to gain that recognition. Nevertheless, she alternates between candor about her alcohol consumption and evasion and prevarication when discussing her relationship with alcohol.

The Adjudicative Guidelines set forth four conditions that may mitigate security concerns under Guideline G. First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show “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.” Adjudicative Guidelines at ¶ 23(a). In the present case, as noted above, the Individual continues to consume alcohol. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(a).

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “[t]he 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.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has not fully acknowledged the extent of her alcohol problem. While the Individual provided evidence that she participated in two online alcohol education programs, these programs do not appear to be of sufficient intensity or effectiveness to overcome the Individual’s alcohol problem. Moreover, the Individual continues to consume alcohol and intends to continue doing so going forward. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(b).

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual has not been participating in an alcohol treatment program, but rather has attended an online education program and a DUI school. Moreover, the record shows that these programs have not been effective since the Individual has not been abstaining from alcohol use and does not intend to do so. Accordingly, I find the Individual has not satisfied the mitigating condition set forth at ¶ 23(c).

Finally, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). In the present case, as noted above, the Individual has not attended any alcohol treatment program, except an IOP which she started but did not complete. Moreover, she has not established a pattern of abstinence from alcohol since she continues to use alcohol. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(d).

I therefore find that the security concerns raised by the Individual’s alcohol-related conduct under Guideline G have not been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and Guideline G. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated all of the security concerns raised under Guidelines E and G. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals