



hearing. At the hearing, the Individual presented the testimony of himself, a project manager from work (Individual's Project Manager), and a friend from his sport team (Individual's Friend). The LSO presented the testimony of the Psychiatrist. The Individual submitted eleven exhibits, marked Individual's Exhibits (Ind. Exs.) 1 through 11.<sup>2</sup> The LSO submitted twelve exhibits, marked Exhibits (Exs.) 1 through 12.<sup>3</sup>

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1 at 5.

Guideline G provides that “[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. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence[,] . . . .”; “[h]abitual or binge consumption of alcohol to the point of impaired judgment . . . .”; and “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . . .) of alcohol use disorder . . . .” *Id.* at ¶ 22(a), (c), and (d). The SSC cited the following information: (1) in September 2023 the Psychiatrist concluded that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text-Revision (DSM-5-TR)*, criteria for Alcohol Use Disorder (AUD), Mild, and that he habitually consumes alcohol; (2) during the Psychiatrist’s evaluation, the Individual tested positive for alcohol consumption that indicated he consumed “2.5 or more standard drinks several days prior to or had binged heavily prior to the test”; and (3) the Individual was arrested and charged in March 2023 with a DWI, admitted to consuming nine alcoholic beverages prior to his arrest, and had a blood alcohol content (BAC) of .162. Ex. 1 at 5. The cited information justifies the LSO’s invocation of Guideline G.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). The SSC cited the aforementioned DWI and two related traffic charges of “Fail[ure] to Drive on Right Half of Roadway when Roadway was Sufficient Width” and “Exceed[ing] Posted Speed Limit.” Ex. 1 at 5. The SSC also cited the Individual’s admission in July 2023 that “he continues to drive home after consuming alcohol . . . .” *Id.* at 5. The cited information justifies the LSO’s invocation of Guideline J.

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<sup>2</sup> The Individual’s exhibits are composed of several .pdf workbooks. References to these exhibits are to the Individual’s exhibit number and the page number of that particular exhibit’s pages as if the exhibit is a standalone .pdf.

<sup>3</sup> References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

### 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 his or her 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. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. FINDINGS OF FACT

For approximately seven years, the Individual has been employed with a DOE Contractor in a position requiring access authorization. Ex. 10 at 54. On March 31, 2023, the Individual traveled out of town for the weekend for a sports tournament. Ex. 9 at 37. That Friday, he met with a friend to "tour[ ] a couple breweries." *Id.* at 37. He reported first eating lunch alone, then having four beers by himself at a brewery. *Id.* He met his friend at another brewery and consumed two more beers. *Id.* They then went to yet another brewery where he had two more beers. *Id.* Finally, the Individual and his friend went to another location for dinner, during which the Individual had a whiskey and cola. *Id.* The Individual estimated that he had nine drinks over approximately six to seven hours. *Id.*

After dinner, the Individual drove his vehicle to his hotel. *Id.* The Individual was pulled over, concluding that he "must have swerved" when he "started to look at [his] GPS on [his] phone" and that it was "an extremely windy day." *Id.* During the stop, the Individual submitted to a breathalyzer test. *Id.*; Hearing Transcript, OHA Case No. PSH-24-0054 (Tr.) at 47. His BAC was found to be .162. Ex. 9 at 37. Thereafter, the Individual was arrested for DWI. Ex. 7 at 31.

The Individual received the following citations: (1) failing to drive on the right half of roadway when the roadway was of sufficient width, (2) exceeding the posted speed limit by 16-19 miles per hour, and (3) DWI. *Id.* at 28-30. On April 4, 2023, the Individual reported his arrest to the LSO.

*Id.* at 25. Thereafter, the LSO issued a first Letter of Interrogatory (LOI), which the Individual signed and returned in May 2023. Ex. 9 at 49. The Individual detailed the circumstances of his DWI and reported that, as of May 16, 2023, he continued to drive himself home after consuming alcohol “depending on how physically impaired” he was. *Id.* at 37–41. The Individual received a second LOI which he signed and returned in July 2023. Ex. 8. In response to the question, “[d]espite your previous arrest for [DWI] on March 31, 2023, why do you continue to drive after consuming alcohol?” the Individual responded that “[s]ince [he’s] usually alone while driving, [he] tries to watch what [he] drink[s] so [he] can make it to [his] destination safely.” *Id.* at 33. After receiving the second LOI, the LSO requested a psychiatric evaluation of the Individual. Ex. 4 at 16; Ex. 10 at 52.

Accordingly, the Individual met with the Psychiatrist on September 19, 2023, for an evaluation. Ex. 10 at 53. As part of the evaluation, the Psychiatrist conducted a face-to-face psychiatric interview with the Individual; administered two psychological tests; and directed him to undergo a Phosphatidylethanol (PEth) test to detect his recent consumption of alcohol. *Id.* at 53, 56–57; Tr. at 60. The Psychiatrist also reviewed the Individual’s Personnel Security File (PSF). Ex. at 53. The Psychiatrist subsequently issued his report on September 29, 2023. *Id.*

During the evaluation with the Psychiatrist, the Individual described the amount of alcohol he typically consumed prior to his March 31 DWI: the Individual drank a few times per week at breweries and when engaging in his sport, usually consuming about three craft beers per sitting. *Id.* at 55. He occasionally drank one additional drink of a distilled spirits, usually whiskey and cola. *Id.* From the PSF, the Psychiatrist observed that, prior to his March 31 DWI, this was the Individual’s drinking pattern for 10 years and that the Individual reported a “higher than normal” level of tolerance, needing to drink 7–8 beers in a two-hour period before feeling intoxicated. *Id.* at 53.

Based upon the Individual’s reported nine alcoholic drinks he had on March 31, 2023, the alcohol by volume of those drinks, and his BAC of .162, the Psychiatrist concluded that the Individual had consumed “[c]onservatively . . . 12 standard drinks in six hours.” *Id.* The Individual reported to the Psychiatrist that he continued to drink after his March 31 DWI, citing that he was not required to stop drinking and that his attorney had not advised him to attend Alcoholics Anonymous (AA). Ex. 10 at 54, 60. The Individual at the time of the interview was still drinking alcohol and driving. *Id.* at 56 (noting that “[s]ince the DWI, [the Individual] spaces out his alcohol consumption to ‘on average’ one drink every 1.5 hours and then waits much longer from his last intake [of alcohol] until he leaves”). The Individual also disclosed that he last drank a week prior to the psychiatric examination, having consumed two beers and a whiskey and cola. *Id.* at 55, 60–61. While he was not participating in AA, he was participating in “anticipated requirements” by the court due to his DWI, including “SATOP, VIP, and [c]ommunity [s]ervice.”<sup>4</sup> *Id.* at 54, 61.

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<sup>4</sup> SATOP is the Substance Awareness Traffic Offender Program “designed to educate and treat people with alcohol and other dependency issues” for the jurisdiction in which the Individual was arrested. Ind. Ex. 5; Ind. Ex. 11. VIP is a Victim Impact Panel through Mothers Against Drunk Driving that “assembles relatives of victims who were killed by drunk drivers, speeders, or other traffic violators to educate those on the dangers of drinking and driving.” Ind. Ex. 7; Ind. Ex. 11.

The Psychiatrist opined that the Individual reported regular consumption of alcohol with some adverse consequences consistent with Mild AUD, specifically “interpersonal difficulties, problems on the job, and use of alcohol to reduce stress.” *Id.* at 57–58, 60. His PEth test result “indicat[ed] it was very likely [he] had consumed 2.5 or more standard drinks for several days prior to the PEth or had binged rather heavily,” which was “generally consistent with the Individual’s face-to-face report.” *Id.* at 55, 57 (reporting that the “last time he consumed any alcohol was a week before the assessment” when “he had a Jack and Coke plus 2 beers”).

The Psychiatrist in his report opined that the following information demonstrated problematic drinking:

[H]is distant history of blackouts and gray-outs in his 20s, 12 standard drinks in six hours on [March] 31, 2023, many times estimating his level of alcohol influence on his ability to drive home after he consumed alcohol, drinking to reduce stress . . . , regular consumption of two to three drinks per week (or a couple times per week; PEth), a PEth indicating between four drinks/week and four drinks/day, and his self-report of greater tolerance . . . .

*Id.* at 61. The Psychiatrist further opined that the Individual met sufficient criteria pursuant to the *DSM-5-TR* for Mild AUD, which requires “at least two of 11 problematic alcohol-related factors that lead to clinically significant impairment or distress.” *Id.* at 61–62. In particular, the Psychiatrist relied on the following three factors in making his diagnosis:

Factor 3 accounts for drinking two or three times per week (2-4 standard drinks per episode; home, local craft beer bar, [and engaging in sports]) and drinking to manage stress. Factor 8 accounts for his pattern of deciding when to drive home after he’s already started drinking, the March 31, 2023[,] DWI, and no attempt (and no failed attempt) to decrease alcohol intake since the DWI. Factor 10 accounts for tolerance (self-report, 12 standard drinks in six hours; reportedly would need 7-8 drinks in two hours for intoxication).

*Id.* at 62; *see also* Tr. at 61–62.

The Psychiatrist also opined that the Individual habitually consumed alcohol, which “repeatedly impaired his judgment about when he is safe to drive[,]” including the instance in which he consumed twelve standard alcoholic beverages leading to his DWI. Ex. 10 at 62. The Psychiatrist found “no evidence of full rehabilitation,” citing the Individual’s continued regular consumption of alcohol. *Id.* To demonstrate rehabilitation or reformation, the Psychiatrist recommended the following treatment: (1) one year of documented abstinence; (2) one year of documented attendance at AA with no less than two meetings per week and evidence of working the AA steps with a sponsor; (3) contact with the contractor employer’s Employee Assistance Program (EAP) for guidance regarding support for alcohol abstinence including breath alcohol concentration tests frequently and randomly; (4) two PEth tests during his year of abstinence to take place at approximately three and then nine months of the abstinence year; and (5) compliance with all court-mandated requirements resulting from the Individual’s DWI. *Id.*; Tr. at 62–63.

The documentary evidence provided by the Individual includes emails verifying the Individual's attendance in Self-Management and Recovery Training (SMART) Recovery on February 20, February 27, March 5, March 12, and March 19, 2024. Ind. Ex. 1; Ind. Ex. 2; Ind. Ex. 3; Ind. Ex. 4; Ind. Ex. 10. The Individual also provided certificates of completion for both the VIP and SATOP. Ind. Ex. 5; Ind. Ex. 7. Additionally, the Individual included a log of his hours performing community service from September 2023 to February 2024 and a negative PEth test with results from February 28, 2024. Ind. Ex. 8; Ind. Ex. 9. Lastly, the Individual submitted two letters, one authored by himself and the other by the lawyer in his pending DWI matter. Ind. Ex. 6; Ind. Ex. 11. The Individual sets forth in his letter, among other things, the circumstances surrounding the DWI, his efforts to take responsibility for his actions, and how the DWI has affected him. Ind. Ex. 6. The Individual's letter noted that after his conversation with the Psychiatrist on September 19, 2023, the Individual "removed alcohol from [his] [sports] league and ha[d] reduced [his] intake to 2-3 beers each week at home" until his security clearance was suspended on November 16, 2023, which "triggered [the Individual] to remove all alcohol from [his] life . . ." *Id.* at 2. His attorney's letter corroborated the efforts that the Individual undertook in anticipation of the court proceeding. Ind. Ex. 11.

At the hearing, the Individual's Project Manager testified to having known the Individual through work for approximately two-and-a-half years. Tr. at 10. Prior to the suspension of the Individual's access authorization, the Individual and his Project Manager would interact daily. *Id.* The Individual's Project Manager indicated that he was unaware of any issues at work because of the Individual's alcohol use prior to the DWI. *Id.* at 10–11. The Individual's Project Manager was generally complimentary of the Individual's work ethic. *Id.* at 11–12. While the Individual's Project Manager was unable to provide specific details as to the Individual's DWI proceedings and current alcohol use, he confirmed discussing with the Individual removing alcohol from his daily life and that the Individual had attended some treatment. *Id.* at 12.

The Individual's Friend also testified during the hearing. She had known the Individual for over ten years, interacting with him weekly through their sports team.<sup>5</sup> *Id.* at 17. The Individual's Friend indicated that over those ten years she had never seen the Individual under the influence of alcohol to the point it impaired his judgment or functioning. *Id.* at 18, 21. She last saw the Individual drink an alcoholic beverage sometime in late 2023 before Christmas. *Id.* at 18. Since then, the Individual has not been drinking alcohol while engaging in his sport—instead having either a water or soft drink. *Id.* at 19. The Individual's Friend indicated that none of their teammates are "drinkers," that she herself rarely drinks alcohol, and that her teammates feel positively about the Individual's change in alcohol consumption. *Id.* at 22. Regarding the Individual's future intention to consume alcohol, the Individual's Friend reported that the Individual expressed to her in late January or early February 2024 a future intent to consume alcohol. *Id.* at 25–26. She also expressed her belief that he could return to controlled alcohol consumption. *Id.* at 25.

The Individual testified that he continued drinking after his March 31 DWI as he was unaware of "what [he] could or couldn't do, or should or shouldn't do." *Id.* at 38. This included continuing to visit breweries to have a couple of drinks or "hav[ing] a drink or two" at a restaurant before

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<sup>5</sup> The Individual's Friend has not had the opportunity to visit the Individual's home and qualified that her observations were limited to their interactions engaging in their sport. Tr. at 20–21.

“[playing his sport] and hav[ing] a drink or two.” *Id.* at 39. The Individual only “realize[d] that [his alcohol consumption] [was] really serious . . .” after meeting with the Psychiatrist in September 2023. *Id.* After meeting with the Psychiatrist, he started to stay home when drinking alcohol and limiting his consumption to one or two drinks per week. *Id.* The Individual testified to receiving the Psychologist’s report, including the treatment recommendations, in December 2023. *Id.* at 30–31. Thereafter, the Individual abstained from drinking sometime in December 2023. *Id.* at 36 (testifying to not having a drink “since early December . . . at home” but then remembering he had “one drink” when playing his sport). Regarding his future intentions with alcohol, the Individual testified that he would “[m]aintain abstinence[.]” *Id.* at 40. However, he could not say “a hundred percent” that he would never drink again, indicating he would “predominantly [drink] at home, . . . one or two drinks, possibly . . . and just keep it at home, for the most part.” *Id.* at 40–42. The Individual indicated that there was still beer in his house that he kept as they had been “aging” for four to five years. *Id.* at 42.

When asked if he had complied with the Psychiatrist’s recommendation to attend AA, the Individual indicated he began attending SMART Recovery sessions in lieu of AA at the advice of a counselor. *Id.* at 33; *see also* Ind. Ex. 1; Ind. Ex. 2; Ind. Ex. 3; Ind. Ex. 4; Ind. Ex. 10. The Individual explained that the delay between receiving the Psychiatrist’s treatment recommendation in December 2023 and his attendance in SMART Recovery beginning on February 20, 2024, resulted from him initially meeting with a different counselor who recommended that he seek a counselor focused on alcohol issues; this second counselor assessed the Individual in January 2024 and recommended SMART Recovery.<sup>6</sup> Tr. at 32–33, 49. The Individual expressed his intention to continue attending weekly SMART Recovery meetings and that he found them helpful. *Id.* at 33–34. In particular, the program provided him with tools in performing the “cost-benefit-analysis” of drinking and understanding and incorporating triggers and coping mechanisms. *Id.* at 35, 52–53, 57–58. Regarding the Psychiatrist’s recommendation to contact his employer’s EAP, the Individual testified to one unsuccessful attempt in December 2023. *Id.* at 35–36, 46–47. Lastly, with respect to the Psychiatrist’s recommendation that the Individual comply with the court requirements related to his DWI and other charges, the Individual clarified that there was not yet an official ruling and that he had completed SATOP and VIP at the recommendation of his attorneys in anticipation of the court’s ruling. *Id.* at 37–38.

After listening to the Individual’s testimony, the Psychiatrist provided an updated opinion regarding the Individual AUD. In particular, the Psychiatrist observed that his first recommendation was one-year of “documented alcohol abstinence[.]” which he considered to have begun on February 20, 2024, based on the SMART Recovery records. *Id.* at 62–63; Ind. Ex. 1. While the Psychiatrist opined that the Individual AUD was in early remission, he stressed the importance of completing the full year of abstinence so that the Individual had sufficient opportunity to face temptations to consume alcohol, implement what he has learned, discuss his issues with his resources, and practice relapse prevention. Tr. at 69–71. Regarding his second recommendation, the Psychiatrist noted that the Individual only attended the SMART Recovery

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<sup>6</sup> Regarding the two counselors, the Individual still only sees the first one who is “not really alcohol related.” Tr. at 52, 56.

meetings once per week in contrast to the recommended twice per week.<sup>7</sup> *Id.* at 63. The Psychiatrist specifically recommended the increased frequency “to reinforce the alcohol abstinence information and give him an opportunity to hear from others.” *Id.* As to the third recommendation, the Psychiatrist recommended that the Individual renew his attempts to contact his employer’s EAP, as participation in the EAP program may alleviate any fear of stigma, provide the Individual with additional support in the workplace, and include accountability in the form of random breath alcohol concentration tests. *Id.* at 63, 68–69. Regarding his fourth recommendation, the Psychiatrist opined that, while the Individual’s February 2024 PEth test was negative, another would need to be taken around November 2024 as “a marker for him . . .” *Id.* at 63–64. Lastly, the Psychiatrist noted that the Individual successfully completed the SATOP and VIP program and was continuing to make progress on his community service hours. *Id.*

The Psychiatrist opined that if the Individual does what is required of him, including making the changes recommended by the Psychiatrist, the Individual’s prognosis regarding being able to maintain alcohol abstinence after one year is good; however, the Psychiatrist determined that, because the Individual had yet to meet his recommendations, he had not yet demonstrated rehabilitation from his AUD. *Id.* at 65, 72. The Psychiatrist also concluded that the Individual was no longer consuming alcohol habitually. *Id.* at 73. Regarding the testimony that the Individual expressed a desire to return to controlled consumption of alcohol, the Psychiatrist explicitly recommend against it, “as there is a slippery slope . . . to more drinking.” *Id.* at 64–65.

## **V. ANALYSIS**

### **A. Guideline G Considerations**

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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.

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<sup>7</sup> In his testimony the Psychiatrist did not distinguish between the benefit derived from AA as opposed to SMART Recovery.



Adjudicative Guidelines at ¶ 23.

I find the Individual has not put forth sufficient evidence to mitigate the Guideline G concerns. Regarding Paragraph 23(a), the Individual's arrest for his DWI occurred on March 31, 2023, less than a year before the hearing. Furthermore, the Individual admitted that, before and after his DWI, he would frequently drink alcohol and drive when he had dinner and participated in his sport activity. The Individual only stopped this behavior following his meeting with the Psychiatrist in September 2023 and only began abstaining from alcohol in December 2023. Because the Individual routinely consumed alcohol before driving, admitted to engaging in this pattern for years leading up to his DWI, and continued to engage in drinking both inside and outside his home until a few months before the hearing, I cannot determine that this behavior was infrequent or the circumstances surrounding his alcohol use were unusual or unique to demonstrate that the behavior is unlikely to reoccur. Furthermore, as explained in detail below, the Individual did not put forward sufficient evidence to demonstrate he has rehabilitated from his Mild AUD. Accordingly, I do not find the Guideline G concerns mitigated pursuant to Paragraph 23(a).

Regarding Paragraph 23(b), there is some evidence that the Individual has acknowledged and taken some action to address his pattern of maladaptive alcohol use insofar as the Individual gradually reduced his alcohol consumption after his March 2023 DWI, eventually abstaining from alcohol at the Psychiatrist's recommendation in December 2023. Furthermore, in accordance with some of the Psychiatrist's treatment recommendations, and in some part through his own initiative, the began participating in SMART Recovery on February 20, 2024, and completed SATOP and VIP prior to any court orders. These steps demonstrate efforts to address his maladaptive alcohol use.

However, the Individual had not accomplished many of the Psychiatrist's specific recommendations. In particular, the Individual had only attended SMART Recovery sessions for little more than a month, and only on a weekly basis, prior to the hearing, as opposed to the recommended twice per week for a full year. Additionally, the Individual made only one unsuccessful attempt to contact his employer's EAP program in December 2023. Lastly, he only obtained one PEth test to document his sobriety.

Consequently, the Individual has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with the Psychiatrist's treatment recommendations. I first note that the Psychiatrist recommended abstinence, not modified consumption. The Individual self-reported that his sobriety began in December 2023, whereas the Psychiatrist considered his documented sobriety to start in February 2024. Even using the date most generous to the Individual, the Individual only demonstrated approximately four months of abstinence by the time of the hearing, which, in this case, is insufficient in length to demonstrate a clear and established pattern of abstinence. I have also considered the questionable reliability of his statement that he intends to remain abstinent given that within the last month he indicated that he plans on resuming controlled drinking, that he presently cannot commit "a hundred percent" to never drinking again, and he is currently "aging" beer in his home to, presumably, consume at a later date. Considering my above findings regarding the actions taken towards his treatment and rehabilitation and the lack of a clear and established pattern of abstinence in accordance with the Psychiatrist's

recommendations, I conclude find Paragraph 23(b) does not apply to resolve the Guideline G concerns.

Regarding Paragraph 23(c), there is no evidence that the Individual is currently participating in a treatment program. At the time of the hearing, the Individual had only been attending SMART Recovery for one month and at a frequency less than what was recommended by the Psychiatrist. The Individual's efforts are not in accordance with the Psychiatrist's recommendation. Accordingly, I conclude that he has not made sufficient progress within a treatment program. In reaching my conclusion, I considered the Individual's testimony that he completed an assessment with a counselor who recommended SMART Recovery; but, the record lacks information regarding the Individual's progress in any additional counseling focused primarily on addressing his AUD. Accordingly, Paragraph 23(c) does not apply to resolve the Guideline G concerns.

Regarding Paragraph 23(d), there is no evidence that the Individual completed a treatment program. Even if SATOP were to count as a completed treatment program, the Individual has not, as I concluded above, demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. Accordingly, Paragraph 23(d) does not apply to resolve the Guideline G concerns.

I find that the Individual has not put forth sufficient evidence to mitigate the concerns that stem from his Mild AUD, DWI, and related charges. I therefore conclude that the Individual has not resolved the Guideline G security concerns.

## **B. Guideline J Considerations**

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.

I find that the Individual has not mitigated the Guideline J concerns. As a preliminary matter, the criminal acts alleged in the SSC are inextricably intertwined with the Individual's alcohol

consumption. Accordingly, much of the analysis in Guideline G applies here. For example, regarding Paragraph 32(a), given that the Individual's DWI occurred in March 2023, that the Individual continued the problematic behavior after the DWI until meeting with the Psychiatrist in September 2023 and only recently started abstaining from alcohol, and that he had not yet demonstrated rehabilitation from his AUD, 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, Paragraph 32(a) does not apply to resolve the Guideline J concerns.

Regarding Paragraph 32(b), I have no information before me that the Individual was coerced or pressured into committing the act. On the day of the March 2023 DWI, there is no indication the Individual's behavior was influenced by any other person besides himself.

With regards to Paragraph 32(c), the record is interspersed with statements that were perhaps meant to mitigate or offer alternative explanations for the DWI. For example, the Individual explained in the May 2023 LOI that it was an "extremely windy day" and that he "must have swerved" because he was checking his phone. However, the Individual has generally admitted to the DWI, and he does not contest that his breathalyzer test resulted in a .162 BAC or that he consumed a significant amount of alcohol prior to driving his vehicle. Accordingly, there is reliable evidence to support that the Individual committed the offense, and I do not find the concern mitigated pursuant to Paragraph 32(c).

Regarding his rehabilitation under Paragraph 32(d), as stated before, the record indicates that the Individual has taken steps to bring these underlying proceedings to an appropriate conclusion, namely completing SATOP, VIP, and community service hours prior to the court's ultimate ruling. Other evidence of rehabilitation includes his recent abstinence and participation in SMART Recovery beginning in February 2024. However, the relatively short passage of time from the Individual's March 2023 DWI and his continuation of concerning behavior post-DWI weighs against a finding of rehabilitation. Furthermore, as discussed above, the Individual has not completed or made substantial progress towards many of the Psychiatrist's recommendations and has yet to demonstrate rehabilitation from the Mild AUD. Accordingly, I do not find that the Individual has demonstrated successful rehabilitation pursuant to the Paragraph 32(d).

I therefore conclude that the Individual has not resolved the Guideline J security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G and Guideline 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 not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should not be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals