

On August 16, 2022, a record search as part of the continuous evaluation of the Individual's eligibility for access authorization revealed that the Individual was arrested and charged with battery in 2021, which she failed to report as required, and was arrested and charged with driving under the influence of alcohol (DUI) in 2000, which she failed to disclose on the QNSPs. *See* Ex. 6 at 36 (reflecting a summary of the adjudication of the Individual's continued eligibility for access authorization); *see also* DOE Order 472.2A § 4(v)(1)–(2) (effective July 9, 2014) (requiring all persons in possession of a DOE security clearance to disclose personnel-security related incidents within two business days of the event).

The local security office (LSO) issued the Individual a letter of interrogatory in April 2023. Ex. 8. In her response, the Individual admitted to having knowingly failed to timely disclose her 2021 arrest because she feared losing her job. *Id.* at 75. The Individual also disclosed that in 2022 she had used cocaine, misused prescription medication, and was involuntarily hospitalized for a second time for mental health reasons following the loss of a pregnancy but had not disclosed any of this derogatory information as required. *Id.* at 76; *see also* DOE Order 472.2A § 4(w)(1), (5) (effective June 10, 2022) (requiring immediate reporting of disclosable events potentially affecting a person's eligibility for access authorization).

On July 12, 2023, the Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a psychiatric assessment. Ex. 10 at 88. On July 25, 2023, the DOE Psychiatrist issued the results of the psychiatric assessment (Report) in which he opined that the Individual habitually consumed alcohol to the point of impaired judgment. *Id.* at 101.

The LSO subsequently issued the Individual a Notification Letter advising her that it possessed reliable information that created substantial doubt regarding her eligibility for access authorization. Ex. 1 at 9–11. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E, G, H, and J of the Adjudicative Guidelines. *Id.* at 5–8.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted fourteen exhibits (Exs. 1–14). The Individual submitted thirteen exhibits (Exs. A–M). The Individual testified on her own behalf. Tr. at 3, 13. The LSO offered the testimony of the DOE Psychiatrist. *Id.* at 3, 99.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as a basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5–6.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest

is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC cited the Individual's failure to timely report her involuntary hospitalization for mental health reasons, cocaine use, prescription drug misuse, and arrest for battery, as well as her failure to disclose her arrest for DUI and involuntary hospitalization for mental health reasons as a minor on the QNSPs.³ Ex. 1 at 5–6. The LSO's allegations that the Individual deliberately omitted relevant facts from the QNSPs and concealed information relevant to a national security eligibility determination from her employer and security officials justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as another basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 6–7. "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. The SSC cited five occasions on which the Individual was arrested after having consumed alcohol⁴ and the DOE Psychiatrist's opinion that the Individual habitually consumed alcohol to the point of impaired judgment. Ex. 1 at 6–7. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a). As explained in depth below, I find that the LSO's allegation that the Individual habitually consumed alcohol to the point of impaired judgment is not sufficiently supported to present security concerns under Guideline G. *Infra* pp. 11–13.

The LSO cited Guideline H (Drug Involvement and Substance Abuse) as another basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 8–9.

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Adjudicative Guidelines at ¶ 24. The SSC cited the Individual's admission to having used cocaine and misused prescription medication while possessing access authorization. Ex. 1 at 7. The LSO's

³ The 2015 QNSP inquired as to whether the person completing the 2015 QNSP had been hospitalized for a mental health condition in the prior seven years. Ex. 13 at 214. As the Individual was hospitalized for a mental health condition over twenty years prior to completing the 2015 QNSP, I find that her marking "no" in response to this question on the 2015 QNSP was an accurate response and, therefore, did not raise security concerns under Guideline E. However, her response of "no" to a question on the 2022 QNSP which asked "have you EVER been hospitalized for a mental health condition" did raise security concerns under Guideline E. Ex. 12 at 167 (emphasis in original).

⁴ I find that one of the instances alleged by the LSO as an alcohol-related arrest – a 2004 incident in which the Individual reported consuming one beer before being arrested for affray (fighting) – is insufficiently related to alcohol consumption to raise security concerns under Guideline G in light of the minimal impact that a single beer would have had on the Individual's behavior. *Infra* pp. 4–5.

allegations that the Individual engaged in substance misuse and illegal drug use while granted access authorization justify its invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (f).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 7–8. “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual's admission to having used cocaine and six occasions on which the Individual was arrested or cited for unlawful conduct. Ex. 1 at 7–8. The LSO's allegations that the Individual engaged in numerous instances of unlawful conduct justify its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

III. REGULATORY STANDARDS

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

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

IV. FINDINGS OF FACT

When the Individual was a minor, she was hospitalized for mental health reasons for one week after running away from home and stating to law enforcement officers who found her that she “would rather not be here than live with [her mother].” Ex. 10 at 97 (reflecting statements the Individual made to the DOE Psychiatrist during a clinical interview). The Individual was arrested and charged with DUI in 2000, and was sentenced to a twelve-month term of probation, the suspension of her driver's license, and to pay fines and fees associated with the offense. Ex. 14 at 242–44. In 2004, the Individual was arrested and charged with affray (fighting). *Id.* at 246; *see also* Ex. 7 at 61 (claiming in response to an LOI that several women initiated the fight at a social establishment because they found the Individual “too bubbly and happy” and “annoying”). The affray charge was dismissed *nolle prosequi* after the prosecuting agency decided not to proceed.

Ex. 14 at 246. The Individual was charged with disorderly conduct in 2008 after she shouted and cursed at a person she did not know to be a law enforcement officer while attending a concert. Ex. 14 at 363; Tr. at 45–46. The disorderly conduct charges were subsequently dismissed. Ex. 14 at 363. The Individual was arrested and charged with simple assault and battery in 2009 after a physical altercation with a friend. *Id.* at 324; *see also* Tr. at 40–42 (testifying that the friend had initiated the altercation and attributing her friend’s behavior to mixing medication for Bipolar Disorder with alcohol). The Individual was charged with destruction of property in 2010 and ordered to pay restitution to her ex-husband for damage to the door of his home. Ex. 14 at 325, 63. Other than her arrest for DUI, the Individual reported minimal to moderate alcohol consumption in connection with each of the offenses. *See* Ex. 7 at 61 (indicating in response to an LOI that she consumed approximately one alcoholic drink prior to her 2004 arrest for affray, three alcoholic drinks over four hours prior to both her 2008 disorderly conduct citation and 2009 simple assault and battery arrest, and no alcohol in connection with her 2010 destruction of property offense).

On November 12, 2015, the Individual signed and submitted the 2015 QNSP. Ex. 13 at 229. As part of completing the 2015 QNSP, the Individual certified that its contents were “true, complete, and correct to the best of [her] knowledge and belief and [were] made in good faith.” *Id.* The Individual disclosed her disorderly conduct, assault and battery, and destruction of property offenses on the 2015 QNSP. *Id.* at 215–18. However, the Individual checked a box marked “No” in response to a question asking whether she had “EVER been charged with an offense involving alcohol or drugs.” *Id.* at 219 (emphasis in original); *see also* Tr. at 33 (acknowledging that she was required to disclose her DUI on the 2015 QNSP and representing that the omission was unintentional). The Individual was subsequently granted access authorization by DOD following a background investigation. *See* Ex. 12 at 170–71 (summarizing her record of clearances and background investigations).

The Individual signed and submitted the 2020 QNSP on February 27, 2020, in connection with her employment by a DOE contractor. *Id.* at 144–45, 77. The Individual signed a certification as part of the 2020 QNSP as to the accuracy of its contents. *Id.* at 177. However, the Individual checked boxes marked “No” in response to questions asking whether she had “EVER been charged with an offense involving alcohol or drugs” and “EVER been hospitalized for a mental health condition.” *Id.* at 167–68 (emphasis in original); *see also* Tr. at 35–36 (testifying at the hearing that she did not disclose her hospitalization for mental health reasons as a minor because she felt that her mother had falsely claimed that she was at risk of self-harm during her parents’ contentious divorce, and she was not diagnosed with a mental health condition or prescribed medication). Following an investigation, the Individual was granted access authorization. Tr. at 73. The Individual has worked for the DOE contractor since January 2020 and, by all accounts contained in the record, is highly regarded for her competence, trustworthiness, and integrity. Ex. J (listing the Individual’s professional experience); Ex. E (containing a character reference from a supervisor with the DOE contractor); Ex. F (endorsing the Individual’s character); Ex. G (endorsing the Individual’s character); Ex. H (endorsing the Individual’s character); Ex. I (endorsing the Individual’s character).

On September 11, 2021, the Individual and her boyfriend were arrested and charged with battery in connection with a domestic dispute in which each alleged that the other was the predominant aggressor. Ex. 9 at 80–84 (documenting the arrests and providing a narrative from the arresting

officer). The Individual alleged that her boyfriend “got upset over nothing and struck her in the face with his fist[,] bit her on the right hand[,] . . . [and] grabbed her around the neck.” *Id.* at 83; *but see* Tr. at 28–29 (claiming at the hearing that her boyfriend, who she believed suffered from “PTSD [post-traumatic stress disorder] issues,” had a PTSD episode in his sleep and assaulted her when he woke up). The Individual’s boyfriend claimed that the Individual “started the incident by pushing him and pulling his hair.” Ex. 9 at 83. Both the Individual and her boyfriend consumed alcohol prior to the altercation. *See* Ex. 8 at 74 (reflecting a statement from the Individual in response to an LOI that she consumed four or five glasses of wine over six-and-one-half hours prior to the altercation). The charges against the Individual were dismissed in July 2022 after the prosecuting agency decided not to proceed. Ex. 14 at 247. The Individual was aware that she was required to disclose her arrest to DOE but decided not to do so because she feared losing her job and “wanted to clear it up first and be able to show that [she] was a victim and wrongfully arrested.” Ex. 8 at 75 (explaining in response to an LOI why she decided not to disclose the arrest as required); *see also* Tr. at 58 (testifying that she did not disclose the arrest after the charges were dismissed because a significant period of time had passed and “at a certain point how do I even – how do I tell [DOE]?”).

In February 2022, the Individual suffered the loss of a pregnancy in the second trimester. Ex. 8 at 76; Ex. 10 at 88; Tr. at 16. On February 22, 2022, the Individual was offered cocaine by an acquaintance and decided to use it because she “was desperate for something to make [her] feel better” Ex. 7 at 58; Ex. 8 at 76. Later that night, the Individual took approximately four milligrams of benzodiazepine medication she had been prescribed for anxiety, which was at least eight times her maximum regular dosage. Ex. 10 at 92. After taking the pills, the Individual lost consciousness and was discovered unresponsive by her boyfriend who called 911. *Id.* The Individual was subsequently admitted to an inpatient mental health facility for six days. Ex. 8 at 76. The Individual did not disclose her illegal drug use or hospitalization for mental health reasons to DOE due to “embarrassment and shame” related to the events. Ex. 7 at 57; Tr. at 26–27 (testifying at the hearing that she was “just embarrassed” and “didn’t want to have to face it”).

On August 16, 2022, the LSO received the results of a continuous evaluation records search showing that the Individual had failed to report her 2000 DUI and 2021 arrest for domestic battery. *See* Ex. 6 at 36 (summarizing the evaluation of the Individual’s eligibility for access authorization). The LSO issued the Individual an LOI to which she responded on April 20, 2023. Ex. 8. The Individual represented that she had not disclosed the DUI on the QNSPs because she mistakenly believed that she was only required to disclose offenses that occurred within seven years of the date of submission of the QNSP. *Id.* at 75. The Individual admitted that she had intentionally failed to disclose her 2021 arrest for domestic battery. *Id.* In response to a question concerning whether she had failed to disclose any other information, the Individual volunteered her illegal drug use and hospitalization for mental health reasons in 2022. *Id.* at 76. In a May 31, 2023, response to a subsequent LOI, the Individual admitted that she had intentionally failed to timely disclose her illegal drug use and mental health-related hospitalization. Ex. 7 at 57.

On July 12, 2023, the Individual met with the DOE Psychiatrist for a psychiatric assessment. Ex. 10 at 88. The Individual told the DOE Psychiatrist that her use of cocaine in February 2022 was her first use of illegal drugs in over twenty years. *Id.* at 94 (indicating that she used marijuana occasionally and cocaine on two occasions in her late teens and early twenties). The Individual

also denied having misused prescription medication on any occasion except for the February 2022 incident that led to her hospitalization. *Id.* at 94–95. Immediately following the clinical interview, the Individual provided a sample for a drug test which was negative for traces of any illegal or controlled substances. *Id.* at 108.

The Individual told the DOE Psychiatrist that she was first prescribed medication for symptoms of depression and anxiety in 2003. *Id.* at 98. The Individual reported experiencing occasional panic attacks which she manages with her prescribed benzodiazepine medication. *Id.* at 99. The Individual also indicated that she had received psychotherapy and attended support groups to manage her grief following the loss of her pregnancy. *Id.*

With respect to alcohol consumption, the Individual reported to the DOE Psychiatrist that she typically consumed two or three glasses of wine per occasion on weekends. *Id.* at 88. The Individual reported two occasions in 2022 when she had consumed more alcohol in one sitting and reported feeling “buzzed.” *Id.* at 88–89. Over the thirty days prior to the clinical interview, the Individual represented that she had consumed between ten and thirteen alcoholic drinks. *Id.* at 89; *see also* Tr. at 82–85 (testifying at the hearing that this account to the DOE Psychiatrist was an estimate, that she was unsure exactly how many drinks she consumed, and acknowledging that some of the glasses of wine she consumed may have been larger by volume than the standard five-ounce volume assumed by the DOE Psychiatrist). Immediately following the clinical interview, the Individual provided a sample for a phosphatidylethanol (PEth)⁵ test which was positive at 97 ng/mL. Ex. 10 at 110.

The DOE Psychiatrist issued his Report on July 25, 2023. *Id.* at 102. He concluded that the Individual met sufficient diagnostic criteria for diagnoses of Other Specified Depressive Disorder and Other Specified Anxiety Disorder, neither of which impaired the Individual’s judgment, stability, reliability, or trustworthiness. *Id.* He further concluded that she did not meet sufficient diagnostic criteria for a diagnosis of any substance use disorder. *Id.* at 101. However, based on the Individual’s admission to consuming four or more drinks in a sitting “less than a few times per year,” her having committed the 2000 DUI and 2008 disorderly conduct offenses after consuming alcohol, the DOE Psychiatrist’s determination that the Individual consumed sufficient alcohol to reach a blood alcohol content (BAC) of .06% on a frequent basis, and the PEth test result, the DOE Psychiatrist concluded that the Individual habitually consumed alcohol to the point of impaired judgment. *Id.* at 93–94, 101. The DOE Psychiatrist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for four to six months, undergoing PEth testing to demonstrate her abstinence from alcohol, and completing either “a psychoeducational course about problematic drinking and/or weekly[] individual [alcohol-related] psychotherapy for at least 2 months’ time” *Id.* at 102.

The Individual testified at the hearing that she had participated in “grief counseling, . . . individual counseling . . . , [and] bible study” to help her address her grief related to the 2022 loss of her pregnancy. Tr. at 16. The Individual represented that she had learned to accept that “it’s okay to be sad,” and that she had developed coping skills to prevent her from making poor decisions to

⁵ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol up to four weeks prior to sample collection. Ex. 10 at 93, 110.

manage her grief in the future. *Id.* at 18, 23–25. She further indicated that she would timely report any incidents that might occur in the future as required. *Id.* at 26–27, 32.

Regarding her illegal drug use, the Individual indicated that she had no intention to ever use illegal drugs or misuse prescription drugs in the future. *Id.* at 21; *see also* Ex. M (declaring her intent not to use illegal drugs or misuse prescription drugs in the future in a signed statement and acknowledging that any such conduct in the future is grounds for revocation of her access authorization). The Individual testified that she had relocated from the state in which she used the cocaine and had not seen the person who provided her with the cocaine since the night on which she used it. *Id.* at 21, 52, 74. She denied having received any drug-related counseling or treatment. *Id.* at 75.

The Individual testified that she intended to engage in moderate alcohol consumption in the future. *Id.* at 70–71. She reported last having consumed alcohol on February 7, 2024, when she had “[a] couple of sips of wine” at a family birthday party and, prior to that, during the 2023 holiday season. *Id.* at 69–70. In support of her self-reported minimal alcohol consumption, the Individual provided the results of monthly PEth tests conducted from January through May 2024, each of which was negative for traces of alcohol consumption. Ex. A; Ex. B; Ex. C; Ex. D; Ex. K. The Individual testified that heavy alcohol consumption was not part of her lifestyle, and that she last recalled becoming intoxicated on December 31, 2022. Tr. at 39, 90.

The DOE Psychiatrist opined at the hearing that the Individual had not demonstrated rehabilitation because she failed to comply with his recommendation that she attend a psychoeducation course or psychotherapy and that he was uncertain that she could successfully return to controlled drinking. *Id.* at 104–05. He opined that the Individual’s prognosis was fair based on his perception that it was unclear whether she would consume alcohol at a healthy level in light of her historic alcoholic consumption and lack of treatment to support healthy drinking behavior. *Id.* at 106–07.

V. ANALYSIS

A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;

- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The Individual was confronted with her omissions on the QNSPs and her failure to disclose being arrested and charged with battery in 2021, and thus the first mitigating condition is not applicable to these security concerns. Although the Individual did disclose her 2022 cocaine use, prescription drug misuse, and mental health-related hospitalization before being confronted with the facts, she did so over one year after the conduct occurred and only made the disclosures in connection with an investigation after her 2021 arrest for battery had been discovered. Failing to reveal the security concerns for over one year was not prompt, and in light of the significance of the concerns and the substantial impairment of the Individual's reliability and judgment during the time that she engaged in the conduct, I find that the Individual's failure to come forward sooner reflects poorly on her judgment and trustworthiness. Moreover, as the Individual's disclosures were made during an investigation, and she might have feared that DOE would learn of the conduct through other means, such as obtaining medical records from her medical providers, I am not convinced that the disclosures were made in good faith. *See Ex. 10 at 88* (indicating that the DOE Psychiatrist sought to obtain the Individual's medical records). For these reasons, I find that the first mitigating condition is inapplicable to each of the security concerns asserted by the LSO under Guideline E. Adjudicative Guidelines at ¶ 17(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual did not assert that she failed to disclose information on the advice of counsel. *Id.* at ¶ 17(b).

The Individual's failure to disclose her 2000 DUI on the QNSPs was a relatively minor oversight that is mitigated by the third mitigating condition. The Individual disclosed significant portions of her criminal record on the 2015 QNSP, and there would be no obvious benefit to her in failing to disclose an additional offense that occurred fifteen years prior to her completion of the 2015 QNSP. Moreover, when the Individual failed to disclose the 2000 DUI on the 2020 QNSP, the offense had already been discovered and adjudicated in connection with the background investigation following the 2015 QNSP. For these reasons, I find that the Individual's failure to list the 2000

DUI on the QNSPs was a minor oversight from which she did not obviously stand to benefit. Thus, I find the third mitigating condition resolves the security concerns associated with these omissions. *Id.* at ¶ 17(c).

However, the other incidents cited by the LSO under Guideline E are not resolved under the third mitigating condition. The Individual's failure to report her 2021 arrest and charge with battery or to timely report her 2022 cocaine use, prescription drug misuse, and hospitalization for mental health reasons are all recent and present serious security concerns. Moreover, the Individual's explanations for her failure to make these disclosures as required, as well as her testimony that she did not disclose her mental health-related hospitalization as a minor because she personally judged the incident to be reflective of her mother's malice and not her own mental health, reflect a pattern on the part of the Individual of choosing to disregard reporting requirements when she deems that the information in question is embarrassing or that she is blameless for the events. While the Individual asserts that each of the events in question occurred under unique circumstances that are unlikely to reoccur, the Individual's pattern of behavior suggests otherwise. As the Individual has repeatedly hidden derogatory information stemming from embarrassing or traumatic events, I am unconvinced that she will report derogatory information as required in the future if she responds poorly to a future trauma or loss. Thus, except for the Individual's failure to disclose the 2000 DUI on the QNSPs as described above, I find the third mitigating condition inapplicable to the facts of this case. *Id.*

The Individual asserts that she has participated in grief counseling and pursued other means of dealing with the loss of her child so that she will not engage in the conduct that she did in 2022 that led to some of her omissions. The Individual has provided no corroborating evidence of these claims, and in any case, such interventions would not relate to the Individual's decisions not to disclose her childhood mental health hospitalization or her 2021 arrest and charge for battery. For the reasons described above, I find that the Individual has a pattern of failing to disclose derogatory information as required and I am unconvinced that counseling related to the loss of her child is likely to impact her willingness to disclose derogatory conduct in the future. Thus, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 17(d).

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

For the reasons set forth above, the Individual has not fully resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

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

Adjudicative Guidelines at ¶ 23.

Before addressing the mitigating conditions, I will first address the LSO's allegation that the Individual habitually consumed alcohol to the point of impaired judgment. Habitual consumption of alcohol to the point of impaired judgment is a term of art in the adjudication of eligibility for access authorization; the term is not used in the medical or psychological communities. *See* Tr. at 109–10 (reflecting the testimony of the DOE Psychiatrist that habitual consumption of alcohol to the point of impaired judgment is not a medical diagnosis and that he understood it to be “something that I’m supposed to evaluate for and that matters for the purposes of clearance”). OHA has routinely defined habitual consumption of alcohol to the point of impaired judgment as intoxication at least once monthly. *See Personnel Security Hearing*, OHA Case No. PSH-24-0004 at 4, note 4 (2024) (accepting approximately monthly intoxication as habitual consumption of alcohol to the point of impaired judgment); *Personnel Security Hearing*, OHA Case No. PSH-18-0034 at 4, note 2 (2018) (accepting “use of alcohol more than once a month to BAC levels near or at that of legal intoxication” as habitual consumption of alcohol to the point of impaired judgment); *Personnel Security Hearing*, OHA Case No. PSH-13-0112 at 5 (2014) (defining habitual consumption of alcohol to the point of impaired judgment as intoxication on an at least monthly basis and citing a string of cases in which OHA accepted at least monthly intoxication as indicative of habitual consumption of alcohol to the point of impaired judgment). Intoxication, as noted in the Report, is commonly understood to mean a BAC of .08%. *See* Ex. 10 at 103 (including definitions of “heavy,” “excessive,” and “binge” drinking from the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Centers for Disease Control (CDC) and noting that these “level[s] of consumption usually elevate[] the BAC above .08 g/percent” and thus that these organizations “essentially define[] ‘heavy’ or ‘excessive’ alcohol consumption as drinking that brings a person to ‘intoxication.’”).

The DOE Psychiatrist defined “intoxication” as a BAC of .06%. *Id.* at 94. According to the DOE Psychiatrist, this lower threshold for intoxication is set forth in a training manual prepared by the company through which DOE retained him to provide psychiatric consulting services, and he

believes that this lower threshold is based on medical research. Tr. at 111–12. However, the only authoritative definition of intoxication in the record is the .08% definition referenced in the Report based on SAMHSA and CDC standards. Absent evidence to justify deviation from a commonly accepted definition, it is not clear that a BAC of .06% constitutes intoxication and thus that the judgment of a person with a BAC of .06% is so substantially impaired as to constitute a security concern. The Individual has consistently denied having become intoxicated since December 31, 2022. Ex. 7 at 58; Ex. 8 at 94; Tr. at 90. However, based on his definition of a BAC of .06% constituting intoxication, the DOE Psychiatrist determined that the Individual had become intoxicated more recently than that. I do not accept that a BAC of .06% constitutes intoxication as that term is used in the Adjudicative Guidelines, and accordingly, I do not accept his conclusions with respect to the frequency of the Individual’s intoxication.

Additionally, the DOE Psychiatrist relied on the results of the July 2023 PEth test to conclude that the Individual habitually consumed alcohol to the point of impaired judgment. The DOE Psychiatrist indicated that, among other things, he relied on a journal article concerning the use of the PEth test in the national security context in estimating the Individual’s alcohol consumption based on the results of the PEth test. Tr. at 113;⁶ *see also* William Ulwelling & Kim Smith, *The PEth Blood Test in the Security Environment: What it is; Why it is Important; and Interpretative Guidelines*, J. OF FORENSIC SCI., July 2018 (Article). The Article notes that “it is possible to make only broad generalizations between PEth values and the quantity, frequency, and recency of [a] person’s drinking” because of physiological and behavioral variables that may affect PEth levels between individuals. Article at 3. The Article further notes that a PEth level between 20 and 200 “corresponds to the top of National Institute of Alcoholism and Alcohol Abuse’s [(NIAAA)] ‘low risk’ category” *Id.* at 5; *see also* *Drinking Levels Defined*, NIAAA (2023), <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking> (last visited May 17, 2024) (defining heavy drinking for women as “consuming four or more [drinks] on any day or 8 or more drinks per week”).

Based on the Article upon which the DOE Psychiatrist relied, it is reasonably likely that the Individual’s typical alcohol consumption was near or perhaps greater than the NIAAA’s recommended levels for physical health. However, whether a person makes medically advisable choices for their health and wellness sheds minimal light on the issue relevant to national security: whether the person consumes alcohol to intoxication sufficiently frequently as to present a security risk. The Article makes clear that the PEth test is capable of providing broad estimates of the range of alcohol an individual might have consumed, but that human variability makes it impossible for the test to identify those levels with pinpoint precision. Some PEth levels are so elevated that they may constitute evidence of problematic alcohol consumption in of themselves. *See* Article at 4 (noting a study finding that a PEth level of 1000 corresponded to consumption of an average of 7

⁶ In the Report, the DOE Psychiatrist asserted that a PEth level between 80 and 200 ng/mL is consistent with consumption of one to three alcoholic drinks daily. Ex. 10 at 93. Notably, the Article concluded that men will usually need to consume more units of alcohol than women to produce the same PEth level. *Id.* The DOE Psychiatrist admitted that he was unaware of whether the studies his estimate was based on measured PEth levels in men, women, or both. Tr. at 115. Studies of women referenced in the Article strongly suggest that the DOE Psychiatrist’s opinion was based on both men and women, and thus overestimated the volume of alcohol necessary for a woman to produce a PEth result similar to that of the Individual. Article at 4 (noting studies finding that a PEth level of 48 corresponded to 4.2 drinks per week for women, 127 corresponded to 2 or more drinks per day for women, and 186 was the mean for women who consumed four or more drinks per sitting at least twice monthly).

alcoholic drinks daily among subjects). However, for persons such as the Individual with low to moderate positive PEth levels under 200, the Article does not support the position that PEth test results are *per se* evidence of habitual consumption of alcohol to the point of impaired judgment.

In this case, the Individual denied experiencing intoxication since late 2022, the LSO has not identified any sources who allege that they have observed the Individual intoxicated since that time, the Individual has never tested positive for alcohol in the workplace, and the Individual has not had her BAC measured in connection with an arrest since 2000. In the absence of evidence to support a conclusion that the Individual consumed alcohol to the point of intoxication on an at least monthly basis, I find that the DOE Psychiatrist's opinion based on the results of the July 2023 PEth test and his definition of intoxication occurring at a BAC of .06% does not establish that the Individual habitually consumes alcohol to the point of impaired judgment.

Turning to the Individual's alcohol-related offenses, the most recent alcohol-related offense alleged by the LSO was the Individual's 2021 arrest for battery. The Individual denied that alcohol precipitated the altercation, and the incident report prepared in connection with the Individual's arrest does not indicate that she appeared intoxicated. Even if she was, this would have been the only occasion on which the Individual committed an alcohol-related offense in at least fifteen years. In light of the isolated nature of the offense, I am convinced that any security concerns raised by the incident under Guideline G are resolved under the first mitigating condition. Adjudicative Guidelines at ¶ 23(a). It is also uncertain that the Individual's consumption of approximately three drinks over an extended period of time in connection with her 2009 arrest for simple assault and battery and 2008 arrest for disorderly conduct impaired her judgment to such an extent that these offenses could be considered alcohol-related incidents. In any case, these two offenses and her 2000 DUI are mitigated by the passage of time since the offenses. *Id.*

C. Guideline H

Conditions that may mitigate security concerns under Guideline H include:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Id. at ¶ 26.

The Individual's illegal drug use and prescription drug misuse occurred within days of each other in connection with the loss of the Individual's pregnancy. This incident is the only instance of illegal drug use or prescription drug misuse alleged by the LSO, it occurred more than two years prior to the hearing, and the loss of the Individual's pregnancy constituted highly unusual circumstances. While the Individual exercised extremely poor judgment in using cocaine and misusing her prescribed benzodiazepine medication, I am convinced that the Individual's conduct was such an isolated incident under such unusual circumstances that the first mitigating condition is applicable. *Id.* at ¶ 26(a).

The Individual has acknowledged her conduct, tested negative for illegal drugs in July 2023 in connection with the psychiatric assessment, relocated from the state in which her cocaine use occurred, and has executed a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of her access authorization. Thus, I find the second mitigating condition applicable to the facts of this case. *Id.* at ¶ 26(b).

Based on the aforementioned considerations, I find that the Individual's extremely poor judgment in using cocaine and misusing prescription drugs is mitigated by the unusual circumstances in which she did so and that it is unlikely that she will engage in illegal drug use or prescription drug misuse in the future. Thus, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline H.

D. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with

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

Id. at ¶ 32.

In assessing whether the passage of time mitigates the Individual's alleged criminal conduct under Guideline J, I find it noteworthy that the Individual was arrested or cited for six offenses prior to her admitted cocaine use in 2022. In light of the number of offenses the Individual has allegedly committed, and the fact that eleven years passed between her 2010 citation for destruction of property and her 2021 arrest for battery, I find that the passage of over two years since her last documented criminal conduct is insufficient in of itself for me to conclude that she is unlikely to engage in criminal conduct in the future. The Individual argues that the majority of these alleged offenses occurred under such unusual circumstances that they are unlikely to recur. To the contrary, the majority of the alleged offenses occurred under circumstances in which the Individual and another person were in conflict and the Individual represented that she was the victim of violence, but the facts appear to have been disputed. Even if this was not the case, the number of the Individual's alleged offenses, and the fact that two of them occurred within the last three years, strongly suggests that the Individual has a pattern of exercising poor judgment in placing herself in situations and associating with persons prone to violence and more recently who provided her with illegal drugs. For these reasons, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not allege that she was pressured into committing any unlawful acts. *Id.* at ¶ 32(b).

The Individual acknowledged that she committed several of the offenses alleged by the LSO but denied that she instigated the confrontations that led to her 2021 arrest for battery, her 2009 arrest for battery, and her 2004 arrest for affray. I am dubious of the Individual's account of her 2021 arrest for battery because her hearing testimony concerning the altercation differed substantially from what she provided to the arresting officer as summarized in the incident report and because the Individual's boyfriend alleged to the arresting officer that the Individual initiated the conflict. Moreover, while I might accept that the Individual was falsely accused of any one of these alleged offenses, the fact that the Individual has been charged with crimes stemming from physical altercations on three separate occasions makes this less likely. Although the charges against the Individual were dropped on each occasion, the fact that a prosecuting agency did not move forward with the cases is not strong evidence that the Individual did not commit the offenses without more information as to why the prosecuting agency did not proceed. The mere fact that the Individual was charged with the offenses provides some evidence that the Individual committed them and, in the absence of exculpatory evidence such as statements from the persons involved in the conflicts with the Individual, I cannot find the third mitigating condition applicable. *Id.* at ¶ 32(c).

As noted above, the passage of time in of itself is insufficient to resolve the security concerns presented by the Individual's unlawful conduct. The Individual was not convicted of most of the offenses alleged by the LSO, and thus could not have completed probation or parole. The Individual has presented no evidence of restitution or constructive community involvement.

She has presented numerous letters attesting to her positive employment record. However, the Individual's positive employment coincided with her 2021 arrest for battery and 2022 cocaine use. In light of the fact that the Individual's positive employment occurred at the same time as the offenses, I cannot conclude that her positive employment record makes her less likely to commit criminal offenses in the future. Thus, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 32(d).

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, G, H, and J of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns under Guidelines G and H, but has not brought forth sufficient evidence to resolve the security concerns under Guidelines E and J. 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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals