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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: March 27, 2024 ) Case No.: PSH-24-0089  
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Issued: June 5, 2024

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**Administrative Judge Decision**

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Phillip Harmonick, Administrative Judge:

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

**I. BACKGROUND**

The Individual has possessed access authorization for several decades in connection with his employment at a DOE site. See Exhibit (Ex.) 5 at 8 (summarizing the Individual's employment history). On October 13, 2023, the Individual submitted a Personnel Security Information Report (PSIR) to the local security office (LSO) in which he disclosed that he had been arrested the evening of October 12, 2023, and charged with DUI. Ex. 7. The Individual reported in the PSIR that he had consumed "6-7 beers and 2 shots of whiskey over 3.5 to 4 hours" prior to his arrest. *Id.* at 2.

The LSO issued the Individual a letter of interrogatory (LOI) concerning his alcohol use and the circumstances of his arrest. Ex. 6. In his response to the LOI, the Individual admitted to consuming alcohol to the point of intoxication two to four times monthly and to having operated a motor vehicle while intoxicated "one to two times" over the prior year. *Id.* at 3-4. He also reported having consumed more alcohol on October 12, 2023, than he had disclosed in the PSIR. *Id.* at 2.

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

On December 11, 2023, the Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a psychiatric evaluation. Ex. 5 at 2. The DOE Psychiatrist subsequently issued a report of the psychiatric evaluation (Report) in which he opined that the Individual habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 10.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 2 at 1–3. 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, and J of the Adjudicative Guidelines. *Id.* at 4–7.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1. 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 eight exhibits (Exs. 1–8). The Individual submitted seventeen exhibits (Exs. A–Q).<sup>2</sup> The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-24-0089 (Tr.) at 3, 11.<sup>3</sup> The LSO offered the testimony of the DOE Psychiatrist. *Id.* at 3, 102–03.

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

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

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 inconsistent accounts of the frequency and amount of his alcohol consumption to the officer who arrested him on October 12, 2023, in the PSIR, in response to the LOI, and to the DOE Psychiatrist. Ex. 2 at 6. The LSO’s allegations that the Individual deliberately provided false or misleading information to government officials and a mental health professional involved in making a recommendation relevant to his eligibility for access authorization justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(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. 2

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<sup>2</sup> The Individual submitted exhibits A–G, H–K, and L–Q via three separate submissions. This Decision cites to the exhibits in the order in which they appear in each submission regardless of their internal pagination.

<sup>3</sup> Due to an unnumbered first page, the second page of the transcript is marked as page 1, and the pagination of the transcript does not correspond to the total number of pages included therein. This Decision cites to the transcript based on the page numbers on the upper right corner of each page therein.

at 4–5. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. The SSC cited the Individual’s admission to consuming alcohol to intoxication multiple times each month, the DOE Psychiatrist’s opinion that the Individual habitually or binge consumed alcohol to the point of impaired judgment, and the Individual’s arrest for DUI.<sup>4</sup> Ex. 2 at 4–5. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work and habitually or binge consumed alcohol to the point of impaired judgment justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 2 at 6–7. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual’s arrest for DUI and admission to having operated a motor vehicle while intoxicated on at least one previous occasion. Ex. 2 at 7. The LSO’s allegations that the Individual engaged in numerous instances of unlawful conduct justify its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(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**

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<sup>4</sup> The LSO alleged that the Individual possessed a personal breathalyzer “but has not systematically assessed his BAC [blood alcohol concentration]” and did not use the breathalyzer before driving on October 12, 2023. Ex. 2 at 5. While relevant to the overall assessment of the Individual’s history of alcohol misuse, it is not apparent to me how the Individual’s failure to use a personal breathalyzer raises security concerns under the Adjudicative Guidelines. Accordingly, I do not assess this alleged security concern below.

The Individual has been employed at a DOE site and possessed access authorization for over thirty years. Tr. at 14, 22; Ex. 5 at 8. In 2018, the Individual and his wife separated after several decades of marriage. Ex. 5 at 5; Tr. at 16–18 (testifying at the hearing that he and his wife amicably divorced following the separation). The Individual subsequently started dating and the frequency of the Individual’s alcohol consumption significantly increased. Ex. 5 at 5 (indicating that the Individual “denied significant alcohol consumption prior to his marital separation and divorce” to the DOE Psychiatrist in the clinical interview); *see also* Ex. 6 at 3 (indicating in response to the LOI that he began consuming whiskey in 2021); Ex. J at 10 (reporting that he typically consumed “two to three beers once or twice a week” prior to the separation); Tr. at 94 (testifying that the frequency of his drinking increased following the separation). The Individual purchased a breathalyzer device to ensure that he did not drive if his blood alcohol concentration exceeded .08. Tr. at 34–35, 55, 58; *see also* Ex. 5 at 6 (indicating that he told the DOE Psychiatrist that “his girlfriend will sometimes drive them . . . if his breathalyzer reading exceeds the legal threshold”); *but see* Tr. at 35, 55 (claiming at the hearing that his breathalyzer had never registered a reading over .08).

On October 12, 2023, the Individual left work early and attended a lunch where he consumed several alcoholic beverages. Tr. at 25–26; Ex. 6 at 2. Later that day, the Individual went to a bar where he consumed alcoholic beverages from approximately 5:30 PM until 9:00 PM. Ex. 6 at 2. While attempting to drive home from the bar, the Individual collided with a tree. *Id.* at 10. A law enforcement officer who arrived on the scene of the accident observed physical signs that the Individual was intoxicated. *Id.* According to an affidavit prepared by the officer, the Individual reported having “consumed approximately 3 or 4 [] beers” at the bar prior to driving. *Id.* at 11. The Individual was arrested for DUI and transported to a lockup where a blood sample was collected from the Individual for testing. *Id.* at 10. The result of the test was positive with a blood alcohol concentration of 0.16%. *Id.* at 6.

The next day, the Individual submitted the PSIR. Ex. 7. In the PSIR, the Individual disclosed his arrest and represented that he consumed “6-7 beers and 2 shots of whiskey over 3.5 to 4 hours” prior to driving home from the bar. *Id.* at 2. The Individual also reported that he consumed alcohol one to two times weekly and that he had believed that he had been intoxicated ten times in the prior year. *Id.*

The LSO issued the Individual the LOI on October 17, 2023. Ex. 6 at 12. In his response, the Individual indicated that he had consumed two 20-oz and two 16-oz beers at lunch on October 12, 2023, followed by seven or eight 12-oz beers and two shots of whiskey at the bar. *Id.* at 2. The Individual stated that he consumed alcohol one to two times weekly, usually 12-or-16-oz beers, and that his consumption varied from one to twelve alcoholic drinks in a day depending on the occasion. *Id.* at 3. The Individual estimated that he consumed alcohol to intoxication “[t]wo-four times a month” and admitted that he had operated a vehicle while intoxicated “one to two times” over the prior year including the occasion on which he was arrested. *Id.* at 3–4.<sup>5</sup>

Beginning October 31, 2023, the Individual participated in an intensive outpatient program (IOP) for alcohol treatment. Ex. C at 8; *see also* Ex. 5 at 5 (indicating that he enrolled in the IOP on the advice of counsel representing him in connection with his DUI offense). The IOP included

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<sup>5</sup> The Individual did not have his breathalyzer with him on the night of his arrest for DUI. Tr. at 54–55, 58.

individualized counseling, group counseling, and alcohol education classes. Tr. at 36. The Individual attended the IOP three times weekly for three hours per session. *Id.* He completed the IOP on December 14, 2023. Ex. C at 8; Ex. H at 3. Following completion of the IOP, clinicians at the IOP recommended that the Individual participate in weekly aftercare. Ex. H at 3; Tr. at 38. The Individual complied with this recommendation and continued to attend the aftercare program, which provides group therapy and support and is modeled on the Alcoholics Anonymous program, on a weekly basis as of the date of the hearing. Tr. at 38–41; Ex. H at 3. The Individual intends to continue attending aftercare in the future. Tr. at 42.

On December 11, 2023, the Individual met with the DOE Psychiatrist for a clinical interview. Ex. 5 at 2. During the clinical interview, the Individual confirmed the information he provided in response to the LOI concerning his alcohol consumption on October 12, 2023. *See id.* at 4 (summarizing information provided by the Individual during the clinical interview). The Individual likewise indicated that he became intoxicated two to three times monthly over the year prior to the clinical interview but noted that he was guessing as to the frequency of his intoxication. *Id.* at 6. The Individual denied having consumed alcohol since his arrest for DUI. *Id.* at 5. At the request of the DOE Psychiatrist, the Individual provided samples for an ethyl glucuronide (EtG) test and a phosphatidylethanol (PEth)<sup>6</sup> test. *Id.* at 9, 14–15. Both tests were negative for traces of alcohol consumption. *Id.*

The DOE Psychiatrist issued his Report on December 20, 2023. *Id.* at 1. In the Report, the DOE Psychiatrist concluded that the Individual habitually or binge consumed alcohol to the point of impaired judgment based on the Individual’s self-reported alcohol consumption.<sup>7</sup> *Id.* at 10. The DOE Psychiatrist recommended that the Individual could demonstrate rehabilitation or reformation by demonstrating one year of “alcohol abstinence or greatly reduced consumption of alcohol.” *Id.* at 11.

On January 28, 2024, the Individual completed a court-ordered alcohol safety program. Ex. D at 10. On May 1, 2024, the Individual was accepted into a pre-trial diversion program for first time offenders in connection with his DUI offense. Ex. M at 6; Tr. at 35–36, 70. Pursuant to the terms of the program, the Individual was sentenced to a twelve-month term of probation and was ordered to pay fees, fines, and restitution and to complete an alcohol education program. Ex. M.<sup>8</sup> The Individual’s driver’s license was also suspended for sixty days, effective June 18, 2024. Ex. N. The Individual retained a psychologist (Individual’s Consultant) in connection with this proceeding, and on April 24, 2024, the Individual’s Consultant conducted an evaluation of the Individual. Ex. J at 7. The Individual’s Consultant conducted a clinical interview of the Individual,

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<sup>6</sup> 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. 5 at 9, 14.

<sup>7</sup> The DOE Psychiatrist defined binge consumption of alcohol for men as “consumption of five or more drinks per single day at least once a month within two hours.” Ex. 5 at 10. The DOE Psychiatrist acknowledged that the Individual’s self-described alcohol consumption was not wholly consistent with this definition as the Individual indicated that he regularly consumed alcohol over a greater period of time than two hours. *Id.*

<sup>8</sup> The Individual had not yet received the terms of his probation as of the date of the hearing. Tr. at 74. The Individual submitted documentation of the terms of his probation approximately two weeks after the hearing which I accepted into the record as Ex. M.

administered several psychological tests, and reviewed several documents provided to him by the Individual. *Id.* at 8. The Individual told the Individual’s Consultant that he “stopped drinking alcohol completely in December 2023,” and that his “last drink was 12/24/2023.” *Id.* at 11. Following the evaluation, the Individual’s Consultant issued a report in which he opined that the Individual “has a history of binge drinking,” albeit not a “chronic pattern” of binge drinking, and that the Individual had never met sufficient criteria for a diagnosis of an alcohol use disorder. *Id.* at 13–14. Based on his perception that the Individual had “learned from the DUI,” he opined that the Individual was at low risk of engaging in such behavior in the future and that he “should be able to return to moderate drinking without difficulty.” *Id.* at 14.

The Individual initially testified at the hearing that he had abstained from alcohol since his October 2023 arrest for DUI. Tr. at 37. However, after being questioned on cross-examination about his statement to the Individual’s Consultant that he had consumed alcohol as recently as December 2023, the Individual admitted that he had consumed alcohol in December 2023 and claimed that he drank one alcohol beverage as part of a holiday toast. *Id.* at 66–69, 100. As evidence of his abstinence from alcohol, the Individual provided the results of PEth tests conducted on April 4, 2024, April 18, 2024, and May 2, 2024, each of which was negative for traces of alcohol consumption. Ex. E; Ex. L. He indicated that he no longer keeps alcohol in his home, and that his friends and family support his abstinence from alcohol. Tr. at 21. The Individual testified that he intends to continue abstaining from alcohol until at least October 2024 to comply with the DOE Psychiatrist’s recommendations and “reassess at that time” because he would like to resume consuming alcohol at family gatherings. *Id.* at 64–65, 69. He explained that he was abstaining from alcohol based on what he had learned about the effects alcohol could have on his life and the people around him but testified that he “would not categorize [himself] as a habitual binge drinker” prior to abstaining from alcohol because he had very rarely consumed “five or more beers in two and a half hours.” *Id.* at 44, 56–57.

The DOE Psychiatrist testified that the Individual had not demonstrated rehabilitation because he had not yet achieved one year of abstinence or reduced alcohol consumption as recommended. *Id.* 133–34. The DOE Psychiatrist disagreed with the Individual’s Consultant’s opinion that the Individual could safely engage in moderate drinking, and opined that moderate social drinking would significantly increase the Individual’s risk of returning to problematic alcohol consumption. *Id.* at 128–32. The DOE Psychiatrist testified that he was satisfied with the Individual’s treatment progress as described in the records submitted by the Individual, and that the Individual’s prognosis was “generally favorable.” *Id.* at 165–66. The DOE Psychiatrist indicated that the Individual’s prognosis would have been more favorable with one year of abstinence from alcohol, and he recommended that the Individual continue abstaining from alcohol and attending aftercare and support groups to support his recovery. *Id.* at 130, 67.

## **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.

While the Individual did underrepresent the volume of his alcohol consumption and frequency of his intoxication in the PSIR, he provided updated estimates of his alcohol consumption less than two weeks later in response to the LOI. There is no indication that the Individual was confronted with information showing that he understated his alcohol consumption on the PSIR before he offered the more voluminous estimates of his alcohol consumption in response to the LOI. In light of the fact that the Individual quickly corrected his misstatement on the PSIR without first having been confronted by the facts, I find the first mitigating condition applicable to the information provided by the Individual in the PSIR. *Id.* at ¶ 17(a).

The inconsistencies between the Individual's accounting of his alcohol consumption in response to the LOI and in the clinical interview with the DOE Psychiatrist are relatively trivial inasmuch as both accounts provided derogatory information concerning the Individual's misuse of alcohol

and the differences in the Individual's estimates of his alcohol consumption were not so significant as to meaningfully affect the adjudication of his eligibility for access authorization. Thus, to the extent that these inconsistencies present security concerns at all, I find that they are so minor as to be resolved under the third mitigating condition. *Id.* at ¶ 17(c). With respect to the Individual's underrepresentation of his alcohol consumption to a law enforcement officer on the date of his arrest for DUI, I find that the Individual's level of intoxication likely impaired his ability to accurately recount his behavior. While the Individual's intoxication and arrest raise security concerns under Guidelines G and J, I find that the Individual's intoxication constituted such unusual circumstances that his inaccurate statement does not cast doubt on his reliability, trustworthiness, or good judgment under Guideline E. *Id.*

For the reasons described above, I find that the Individual has 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 must first address arguments raised by the Individual that the LSO did not sufficiently establish that he engaged in binge drinking to raise security concerns under Guideline G. *See* Tr. at 189–90 (arguing in his closing arguments that it was unclear that his self-described alcohol consumption was indicative of binge drinking because of uncertainty as to the number of hours within which he consumed the alcohol); *see also supra* p. 6 (testifying that he did not consider himself a frequent binge drinker). The Individual's self-reported alcohol consumption was insufficiently specific to conclude with certainty how frequently he consumed five or more alcoholic drinks in two hours – the definition of binge drinking specified by the DOE Psychiatrist. *Supra* note 7. However, the Individual does not dispute that he engaged



in a binge drinking episode on the night of his arrest for DUI. Tr. at 100. Moreover, the Individual's own estimates of his alcohol consumption included ranges potentially indicative of binge consumption of alcohol. *See* Ex. 6 at 3 (indicating in response to the LOI that he consumed two to ten beers in social settings over two to four hours, thus suggesting that he sometimes consumed more than five beers in two hours which would constitute a binge drinking episode based on the DOE Psychiatrist's definition). Furthermore, the Individual acknowledged that he regularly consumed alcohol to intoxication. *Id.* (indicating that he consumed alcohol to the point of intoxication two to four times monthly). In light of the Individual's admission to binge drinking on the night of his arrest for DUI, acknowledgement of consuming alcohol to self-described intoxication multiple times monthly, and lack of specificity in his estimates of his own alcohol consumption, I find it reasonable for the DOE Psychiatrist to have inferred that the Individual engaged in binge drinking on a sufficiently frequent basis to present security concerns. The Individual's Consultant likewise concluded that the Individual "has a history of binge drinking." Ex. J at 13.

Even if the Individual did not engage in binge drinking, he certainly engaged in habitual consumption of alcohol to the point of impaired judgment. *See Personnel Security Hearing*, OHA Case No. PSH-18-0054 at 4 note 3 (2018) (characterizing habitual consumption of alcohol to the point of impaired judgment as consumption of alcohol to intoxication more than once per month); *see also Personnel Security Hearing*, OHA Case No. PSH-18-0034 at 4 note 2 (2018) (applying the same definition). Although the DOE Psychiatrist did not specifically define habitual consumption of alcohol to the point of impaired judgment in his Report, both the Report and the SSC make reference to the Individual having engaged in binge drinking or habitual consumption of alcohol to the point of impaired judgment. Ex. 2 at 4; Ex. 5 at 10. Thus, even if the Individual did not meet the DOE Psychiatrist's definition of binge drinking, his admitted consumption of alcohol to the point of intoxication multiple times monthly constituted sufficient evidence of habitual consumption of alcohol to the point of impaired judgment to raise security concerns under Guideline G.

Turning to the mitigating conditions, the Individual's alcohol consumption patterns were relatively consistent for at least five years prior to his arrest for DUI. In light of the regularity and duration of the Individual's pattern of alcohol consumption, the roughly seven months of abstinence or significantly decreased alcohol consumption the Individual has claimed to have established is too brief of a period to establish the applicability of the first mitigating condition. Adjudicative Guidelines at ¶ 23(a).

The second mitigating condition is inapplicable because the Individual has not established the year of modified consumption or abstinence from alcohol recommended by the DOE Psychiatrist. Moreover, the only corroborating evidence the Individual has offered of his abstinence from alcohol since the PEth testing requested by the DOE Psychiatrist is three recent PEth tests, the results of which only address a fraction of the Individual's claimed period of abstinence from alcohol.<sup>9</sup> Thus, the Individual has not brought forth sufficient evidence to demonstrate the clear

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<sup>9</sup> The Individual claims to have been tested for alcohol use twice while in the IOP. Tr. at 90-91. The Individual has presented no evidence of these tests, and the letters from the IOP that he offered into evidence make reference to drug testing but not alcohol testing. Ex. H at 3 (indicating that the Individual "submitted to random urine drug screens" and "test[ed] negative on random urine drug screens").

and established pattern of modified consumption or abstinence in accordance with treatment recommendations necessary to establish the applicability of the second mitigating condition. *Id.* at ¶ 23(b).

The Individual is currently participating in treatment and has not relapsed following treatment in the past. The Individual's Consultant opined that the Individual had responded well to treatment and offered a positive prognosis for the Individual's recovery. Moreover, the DOE Psychiatrist indicated that the Individual's progress in treatment was satisfactory. Thus, the third mitigating condition is applicable in this case. *Id.* at ¶ 23(c). The fourth mitigating condition is not applicable because the Individual is still participating in aftercare and as described above, has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(d).

Although the Individual has established the applicability of the third mitigating condition, there are numerous considerations that weigh against finding the Guideline G concerns to be resolved. The Individual demonstrated extremely poor judgment in driving while intoxicated in October 2023. The seriousness of this conduct is exacerbated by the Individual's age and maturity, his decades of experience holding access authorization, and the recency of the conduct. *See* 10 C.F.R. § 710.7(c) (listing factors to be considered in applying the Adjudicative Guidelines). For a person of the Individual's age and experience not to have the foresight to refrain from such reckless behavior casts serious doubt on his judgment and reliability. *See also* Tr. at 132–33 (reflecting the testimony of the DOE Psychiatrist that “not many people at [the Individual's] age are drinking eight to 10 beers on a given day”). While the Individual has only been arrested for DUI on one occasion, he admitted in his response to the LOI that he may have driven while intoxicated on another occasion within the prior year and he also bought a breathalyzer due to his concerns that his alcohol consumption could lead to him operating a motor vehicle while intoxicated. *Supra* p. 4. In light of the frequency of the Individual's admitted intoxication, and the fact that he admitted being concerned that his drinking behavior placed him at risk of driving while intoxicated, I find it highly improbable that the only occasion on which the Individual operated a motor vehicle while intoxicated resulted in his DUI arrest.

The rapid shift in the Individual's alcohol consumption from self-described moderate drinking for most of his adult life to frequent intoxication following the dissolution of his marriage suggests that the good judgment he exercised for the majority of his lengthy professional life changed approximately five years ago. The Individual's hearing testimony was evasive in several respects, such as when he claimed not to have registered a blood alcohol content in excess of .08 on his breathalyzer despite having previously admitted doing so to the DOE Psychiatrist and when he denied having consumed any alcohol since October 2023 until confronted with his account to the Individual's Consultant. This evasiveness casts doubt on the reliability of the Individual's claimed abstinence from alcohol, much of which was not corroborated by alcohol testing. Additionally, the Individual's desire to return to social drinking, which the DOE Psychiatrist opined placed him at risk of returning to misusing alcohol, leaves me in doubt that the Individual will act responsibly in the future when he is no longer subject to monitoring or probation. In sum, I am concerned that the Individual's judgment and reliability changed significantly five years ago, he intends to return to social drinking following the adjudication of his eligibility for access authorization, and he does not sincerely intend to change his relationship with alcohol. The weight of the mitigation provided

by the Individual's treatment is overwhelmed by the persisting negative factors that call into question the Individual's judgment and reliability. Thus, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

### **C. 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.

While the Individual denied that he frequently drove while intoxicated, the alcohol misuse that led to the Individual's October 2023 DUI was relatively frequent and recent. As described above, I am not convinced that the Individual has adequately addressed the alcohol-related issues that precipitated his DUI. Considering the recency of the DUI, for which the Individual still must serve probation, and the uncertainty as to whether the Individual will return to social drinking which may lead him to return to problematic drinking and commit alcohol-related offenses in the future, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because there is no indication in the record that the Individual was pressured or coerced into driving while intoxicated. *Id.* at ¶ 32(b). The third mitigating condition is inapplicable because the Individual does not deny that he committed the offense or that he may have driven while intoxicated on another occasion within approximately one year of his DUI. *Id.* at ¶ 32(c).

The Individual asserts that he has a positive employment record and has complied with all judicial orders in connection with his DUI offense. The Individual's positive employment record predated his DUI offense and therefore cannot serve as evidence of rehabilitation following the offense. There is some evidence in the record that he has complied with the terms of a first-time offender program, but as of the date of the hearing he had not even received the terms of his probation, and evidence submitted following the hearing showed that he will serve a twelve-month probation term. *See supra* note 8. In light of the recency of the Individual's offense and the fact that he had not even received the terms of his probation as of the date of

the hearing, I find that the Individual has not yet established a sufficient period of compliance for the fourth mitigating condition to apply. *Id.* at ¶ 33(d).

For the reasons set forth above, the Individual has not established the applicability of any of the mitigating conditions. Therefore, he has not resolved the security concerns asserted by the LSO under Guideline J.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, G, 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 Guideline E, but not the security concerns under Guidelines G 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