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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: May 13, 2024) Case No.: PSH-24-0123
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Issued: August 23, 2024

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

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

I. BACKGROUND

The Individual was granted access authorization in 2019 in connection with his employment by a DOE contractor.² Exhibit (Ex.) 16 at 192, 214–15.³ On October 15, 2022, the Individual was arrested and charged with Battery on a Household Member and False Imprisonment following a domestic dispute with his wife after returning home from a bar. Ex. 10 at 110–12 (containing an incident report prepared by the arresting officer). On August 5, 2023, the Individual was arrested and charged with Aggravated Battery with a Deadly Weapon Against a Household Member. Ex. 8 at 34–40. According to documentation appended to a Personnel Security Information Report the Individual provided to the local security office (LSO), the Individual allegedly cut his wife with a

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

² The Individual was previously granted access authorization in the 1990s in connection with another position. Ex. 16 at 214.

³ The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

knife during a dispute at a family gathering and was visibly intoxicated at the time of his arrest. *Id.* at 38–39.

The LSO issued the Individual three letters of interrogatory (LOIs) concerning these events, the responses to which the Individual submitted on April 5, 2023 (First LOI), August 21, 2023 (Second LOI), and October 10, 2023 (Third LOI). Ex. 9; Ex. 10; Ex. 11. On November 14, 2023, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological assessment. Ex. 14 at 125. On November 27, 2023, the DOE Psychologist issued the results of the psychological assessment (Report) in which she opined that the Individual was “consuming heavy/excessive amounts of alcohol” to the point of impaired judgment. *Id.* at 131. She further opined that the Individual met sufficient diagnostic criteria for diagnoses of Alcohol Use Disorder (AUD), Moderate, and Adjustment Disorder with Mixed Anxiety and Depressed Mood under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*, and that both of those conditions impaired the Individual’s judgment. *Id.* at 131–32.

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. 1 at 7–9. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G, I, and J of the Adjudicative Guidelines. *Id.* at 5–6.

The Individual exercised his 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 sixteen exhibits (Exs. 1–16). The Individual submitted three exhibits (Exs. A–C). The Individual testified on his own behalf and offered the testimony of a Licensed Professional Counselor (Individual’s Counselor). Hearing Transcript, OHA Case No. PSH-24-0123 (Tr.) at 3, 15, 61. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 76.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 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 two arrests for Battery after having consumed alcohol and the DOE Psychologist’s opinion that the Individual habitually or binge consumed alcohol to the point of impaired judgment and met sufficient diagnostic criteria for a diagnosis of AUD, Moderate, under the *DSM-5-TR*. Ex. 1 at 5. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, habitually or binge consumed alcohol to the point of impaired judgment, and was diagnosed with AUD justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

The LSO cited Guideline I (Psychological Conditions) as another basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5–6. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal

diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood under the *DSM-5-TR*. Ex. 1 at 5–6. The LSO’s citation to the opinion of the DOE Psychologist that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness justifies its invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

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 6. “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 2022 and 2023 arrests following domestic disputes. Ex. 1 at 6. The LSO’s allegations that the Individual engaged in criminal 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

On October 15, 2022, the Individual and his wife went to a bar. Ex. 12 at 110. The Individual danced with another woman, which led to a verbal dispute with his wife, and the Individual’s wife left the bar without him. *Id.* Some time later, the Individual returned home where the dispute with his wife resumed. *Id.* The Individual’s wife called 911 and reported that the Individual was “hitting and choking her.” *Id.*

The law enforcement officer who responded to the 911 call “observed redness on [the Individual’s wife’s] neck” *Id.* at 111. The Individual’s wife alleged that during the dispute the Individual had “began choking her and punching her on the chest” before “push[ing] her into [a] bedroom” and telling her to leave the home. *Id.* at 110. The Individual admitted that he had pushed her into another room but did not admit to the other alleged physical contact. *Id.*; *see also* Tr. at 22 (testifying at the hearing that he tried to keep his wife out of the bedroom because he was upset with her for leaving the bar without telling him where she was going and wanted her to sleep elsewhere). Law enforcement arrested the Individual and charged him with Battery on a Household Member and False Imprisonment. Ex. 12 at 111–12. The charges against the Individual were later dismissed after the Individual’s wife refused to cooperate with the prosecuting agency. *Id.* at 114.

On April 5, 2023, the Individual submitted his response to the First LOI. Ex. 11 at 100. The Individual represented that he had consumed two beers at the bar on October 22, 2022, prior to his arrest. *Id.* at 84; *but see* Tr. at 23 (testifying at the hearing that the number of drinks he consumed prior to the incident “was probably more than three”). The Individual indicated that he typically consumed “a couple beers at dinner” when out with his wife every other week and that he had not consumed alcohol to the point of intoxication in “years.” Ex. 11 at 87–89.

The Individual was arrested and charged with Aggravated Battery with a Deadly Weapon Against a Household Member on August 5, 2023. Ex. 8 at 34–40. In the early morning, law enforcement officers were summoned to the Individual’s father’s home where the Individual, his wife, and several other family members had gathered for a social event. *Id.* at 36, 39. A law enforcement officer observed cuts on one of the Individual’s wife’s arms and one of her ankles as well as cuts on the Individual’s hands. *Id.* at 39. The Individual’s wife alleged that she and the Individual had argued and that the Individual “began to threaten her with a knife” before “swinging the knife” and cutting her arm and leg. *Id.* The Individual alleged that both he and his wife had been drinking, and that she “bec[a]me irate” and tried to cut him with the knife. *Id.* The law enforcement officer noted that the Individual’s “statements were hard to understand due to [the Individual] being intoxicated.” *Id.*

In his August 21, 2023, response to the Second LOI, the Individual represented that his and his wife’s injuries occurred “during the scuffle that ensued” and stated that “[i]t was an unfortunate alcohol-based mistake and a lapse in [his] normal sound judgment.” Ex. 10 at 66. The Individual additionally asserted that he was experiencing difficulties coping with the death of his son in 2020, and that he believed “that these incidents [were] rooted in [his] struggles with grief, not in any chemical or substance-related actions.” *Id.* at 69.

In response to the Third LOI on October 10, 2023, the Individual estimated that he had consumed eight beers and three “hard liquor shots” from approximately 6:00 PM on August 4, 2023, until his arrest in the early morning hours of August 5, 2023. Ex. 9 at 44. The Individual represented that this was “extremely more” alcohol than he usually consumed and attributed his heavy alcohol consumption on that occasion to “being with family at a reunion” *Id.*

The Individual’s wife petitioned for divorce from the Individual on November 6, 2023. Ex. 9 at 72–74. As of the date of the hearing, the divorce proceedings remained ongoing. Tr. at 55–57.

On November 14, 2023, the Individual met with the DOE Psychologist for a clinical interview. Ex. 14 at 125. The Individual represented to the DOE Psychologist that he had realized after his August 2023 arrest that “he had not dealt with the death of his son,” in a motor vehicle accident in 2020, and that he had begun participating in counseling. *Id.* at 127, 29. The Individual represented that he met with the Individual’s Counselor weekly and that “she’s helped [] a lot.” *Id.* at 129. The DOE Psychologist contacted the facility at which the Individual’s Counselor is employed and spoke to the owner of the facility. *Id.* According to the owner of the facility, the Individual had been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood following an intake session on September 22, 2023. *Id.* The intake session occurred approximately one month after the Individual’s first scheduled session due to the Individual failing to appear at two previously scheduled intake sessions. *Id.* The owner of the facility indicated that the Individual was “hit-and-miss on attendance . . . [with frequent] no shows, cancelled, and not rescheduling” and that “not even once” had he attended consecutive weeks of counseling. *Id.*

Regarding his alcohol consumption, the Individual told the DOE Psychologist that he had occasionally consumed moderate amounts of alcohol for several decades before marrying his wife in 2022. *Id.* at 128. According to the Individual, he began consuming alcohol regularly in 2022, albeit still in moderation, because his wife “liked to drink” and consumed alcohol multiple times weekly. *Id.* The Individual denied that he had consumed alcohol to intoxication in many years and claimed that he had not consumed alcohol for approximately two months prior to the clinical interview. *Id.* at 128, 39; *but see* Tr. at 42–43 (admitting at the hearing that he had consumed alcohol in the two months prior to the clinical interview but had denied doing so to the DOE Psychologist because he was “afraid to lose [his] clearance”).

At the request of the DOE Psychologist, the Individual provided a blood sample for a phosphatidylethanol (PEth)⁴ test. Ex. 14 at 129, 38. The PEth test was positive at 314 ng/mL. *Id.* at 138. According to a medical doctor who interpreted the PEth test results, a PEth level over 200 ng/mL is “a rough guideline threshold to indicate ‘Heavy Consumption’ of alcohol where heavy drinking was defined as at least 4 drinks/day several days per week.” *Id.* at 139 (citing 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). The medical doctor further opined that the PEth test results “clearly indicate[d] [that the Individual] is under-reporting his alcohol consumption over the past month” and that “[s]ince he reported no alcohol consumption over the past month, his PEth test should be negative.” *Id.*

The DOE Psychologist issued her Report on November 27, 2023. *Id.* at 132. In the Report, the DOE Psychologist opined that the Individual met sufficient criteria for a diagnosis of AUD, Moderate, under the *DSM-5-TR*, and that he had “been consuming heavy/excessive amounts of alcohol.” *Id.* at 131. The DOE Psychologist recommended that the Individual participate in an intensive outpatient program (IOP) for alcohol treatment for at least twelve weeks followed by weekly aftercare for one year, or alternatively that he attend Alcoholics Anonymous (AA) meetings four times weekly and work the steps of the AA program with a sponsor for at least one

⁴ 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. 14 at 129, 38–39.

year. *Id.* at 131–32. She further recommended that he abstain from alcohol throughout treatment and undergo monthly PEth testing to substantiate his abstinence from alcohol. *Id.* at 132.

The DOE Psychologist endorsed the Individual’s Counselor’s diagnosis of the Individual with Adjustment Disorder with Mixed Anxiety and Depressed Mood and noted that the Individual had acknowledged that his grief had “negatively impacted his judgment and emotional stability.” *Id.* She recommended that the Individual “[a]ttend[] to his psychological needs” in conjunction with alcohol treatment or consistently attend weekly counseling with the Individual’s Counselor. *Id.*

The Individual testified at the hearing that he had consumed “quite a bit” of alcohol, usually three to four times weekly, in 2022 and 2023. Tr. at 24, 27. The Individual indicated that his alcohol consumption during this period was “higher than it[had] ever been in [his] life” and attributed his heavy alcohol consumption to the influence of his wife. *Id.* at 24–25. He further testified that he had learned that he developed a medical condition that could be exacerbated by alcohol consumption and that this medical condition motivated him to reduce his alcohol consumption. *Id.* at 15, 17; *see also* Ex. A (reflecting a letter from a nurse practitioner who indicated that the Individual is receiving treatment for the medical condition).⁵

Regarding the charges associated with his 2023 arrest, the Individual indicated that the proceeding was ongoing. Tr. at 57–58. The Individual had been subject to a restraining order pursuant to which he had been ordered to avoid contact with his wife and represented that he had fully complied with the order. *Id.* at 59. On the advice of his legal counsel, the Individual declined to answer questions at the hearing related to the incident that led to his arrest. *Id.* at 30.

The Individual testified that following his 2023 arrest he consumed alcohol in moderation one to two times weekly and never to intoxication. *Id.* at 32–34. The Individual expressed the opinion that his alcohol consumption was “light to moderate” following his arrest until his meeting with the DOE Psychologist in November 2023 and that he was “very, very surprised” by the results of the PEth test conducted at the DOE Psychologist’s request. *Id.* at 39–40. He indicated that he further reduced his alcohol consumption since learning of his medical condition and usually only consumed alcohol when out to dinner. *Id.* at 34–35. The Individual represented that he had last consumed alcohol approximately three weeks prior to the hearing when he consumed one beer. *Id.* at 34.

The Individual indicated that he first began meeting with the Individual’s Counselor for grief counseling unrelated to his alcohol consumption. *Id.* at 52. He currently meets with the Individual’s Counselor twice weekly for one hour per session. *Id.* at 46. The Individual testified that he had learned to formulate a response when confronted with intense feelings rather than reacting emotionally. *Id.* at 53. The Individual indicated that he was focusing on his health and attending a gym regularly as healthy coping mechanisms. *Id.* at 54.

According to the Individual, the Individual’s Counselor had opined that “[t]he issue isn’t alcohol” and that his problematic alcohol consumption was the result of “codependency” and a desire to

⁵ The Individual speculated that this medical condition might have been caused by occupational exposure to toxic substances. Tr. at 35–36. The Individual acknowledged that the condition could also be caused by alcohol consumption but denied that this was the case for him. *Id.* at 37.

please others. *Id.* at 45. The Individual stated that he will use this knowledge to avoid consuming alcohol due to “peer pressure” in the future. *Id.* at 32. He indicated that the Individual’s Counselor had recommended against his consuming alcohol, and helped him recognize that alcohol was detrimental to his health and that he did not need it in his life, but that his efforts towards abstinence were still ongoing. *Id.* at 46, 48–49. He indicated that he was not yet fully abstaining from alcohol but intended to do so and believed he was “very, very close” to realizing his goal of abstaining from alcohol. *Id.* at 49. He further indicated that he had attended one AA meeting with a coworker and intended to attend additional meetings in the future. *Id.* 50–51. However, he acknowledged that he had not participated in an IOP or undergone alcohol testing. *Id.*

The Individual’s Counselor testified that she first met with the Individual on September 22, 2023, for grief counseling and to help him manage family conflicts. *Id.* at 62–63. She testified that she met with him at least every other week in September, October, and November 2023. *Id.* at 63; *but see supra* p. 5 (reflecting the statements by the owner of the facility at which the Individual’s Counselor works that the Individual’s attendance was sporadic).⁶ In November 2023, the Individual told her that he was unable to attend counseling due to scheduling conflicts. *Tr.* at 64. The Individual returned to counseling in January 2024 for support related to stress from legal issues and conflict with his ex-wife. *Id.* The Individual’s Counselor diagnosed him with Adjustment Disorder but did not find that he met sufficient criteria for an alcohol-related diagnosis. *Id.* at 64–65. The Individual’s Counselor met with the Individual on only eight or nine occasions from January 2024 until mid-July 2024. *Id.* at 65–66. In mid-July, the Individual began meeting with her twice weekly due to work-related concerns and because he was recommended to obtain an alcohol-related assessment. *Id.* at 66. She testified that she has provided the Individual with counseling primarily on his relationship with his ex-wife and his “codependency” which she believed negatively influenced his decision making and led to his consumption of alcohol to excess. *Id.* at 67–68.

The Individual’s Counselor testified that she is working with the Individual on a “relapse prevention plan” even though she has not diagnosed him with AUD due to the issues alcohol has caused him. *Id.* at 68. This includes avoiding places “that might [] trigger his being [] around alcohol” [sic], “watching out for himself and . . . identifying how he’s feeling around [alcohol],” and meeting with the Individual’s Counselor to discuss his alcohol-related experiences and feelings. *Id.* at 73. The Individual’s Counselor opined that the Individual has a “good” prognosis, both with respect to the Adjustment Disorder and avoiding alcohol misuse. *Id.* at 69–70.

The DOE Psychologist opined that the Individual’s Counselor was providing the Individual with supportive, appropriate therapy for his Adjustment Disorder and that his prognosis for managing the condition was “very good.” *Id.* at 82, 84. However, she testified that the Individual had not complied with her recommendations for alcohol-related treatment. *Id.* at 80. She opined that the Individual would benefit from more rigorous, alcohol-focused treatment than the counseling provided by the Individual’s Counselor to address his AUD. *Id.* at 83. The DOE Psychologist

⁶ The statements by the owner of the facility to the DOE Psychologist were based on the owner’s review of the facility’s records. *Ex.* 14 at 129. It is not apparent from the Individual’s Counselor’s testimony whether she reviewed the Individual’s counseling attendance records before testifying concerning the frequency of his attendance in 2023. As the statements by the owner of the facility were made based on her contemporaneous review of the Individual’s counseling attendance records, I credit the facility owner’s account over that of the Individual’s Counselor.

indicated that her diagnosis of the Individual with AUD was unchanged and that his prognosis for managing his AUD was “guarded.” *Id.* at 84–85.

V. ANALYSIS

A. 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.

The Individual denies having engaged in heavy alcohol consumption since his August 2023 arrest. However, the Individual did not undergo alcohol testing as recommended by the DOE Psychologist to corroborate that he has reduced his alcohol consumption. The results of the November 2023 PEth test provide compelling evidence that the Individual underreported his alcohol consumption to the DOE Psychologist and the Individual admitted at the hearing that his account of his alcohol consumption to the DOE Psychologist was inaccurate. In light of this evidence that the Individual is an unreliable source of information concerning his alcohol consumption, and in the absence of alcohol testing to corroborate his claims, I cannot conclude that the Individual has significantly reduced his alcohol consumption.

As there is insufficient evidence to conclude that the Individual has modified his alcohol consumption, I cannot conclude that any time has passed since the alcohol misuse giving rise to the security concerns. The Individual does not dispute that he engaged in frequent, heavy alcohol consumption for several years. For these reasons, I cannot conclude that the Individual’s alcohol misuse and alleged alcohol-related criminal conduct are unlikely to reoccur. Thus, the first mitigating condition under Guideline G is inapplicable. *Id.* at ¶ 23(a).

As previously indicated, the Individual has not brought forth sufficient evidence to show that he has modified his alcohol consumption as he claims. Even had he done so, the Individual acknowledged that his efforts to abstain from alcohol remained a work in progress and that he consumed alcohol three weeks prior to the hearing despite the DOE Psychologist's recommendation that he abstain from alcohol. Accordingly, the second mitigating condition is inapplicable. *Id.* at ¶ 23(b).

The third mitigating condition is inapplicable to the facts of this case because the Individual's counseling with the Individual's Counselor is not primarily focused on alcohol-related treatment and did not satisfy the DOE Psychologist's recommendations for alcohol treatment. Moreover, the DOE Psychologist testified that the Individual's prognosis was "guarded." As the Individual is not participating in treatment specifically related to alcohol, and is not making satisfactory progress, the third mitigating condition is inapplicable. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual has not completed an alcohol-related treatment program. *Id.* at ¶ 23(d).

For the aforementioned reasons, I find that the Individual has not established the applicability of any of the mitigating conditions. Accordingly, the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline I

Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

The Individual has been receiving treatment from the Individual's Counselor related to his Adjustment Disorder for nearly one year, albeit with significant interruptions. The DOE Psychologist testified that the Individual's Counselor's treatment was appropriate for managing

the Individual's condition. Moreover, both the Individual's Counselor and the DOE Psychologist opined that the Individual had a good prognosis for managing anxiety and depression associated with his Adjustment Disorder going forward. For these reasons, I find that the Individual has established the applicability of the second mitigating condition and that the security concerns asserted by the LSO under Guideline I are resolved. *Id.* at ¶ 29(b).

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.

The Individual has been arrested twice in the last two years following alcohol-related domestic disputes. The Individual's troubled relationship with his wife, which has come to an end, might be considered an unusual circumstance in his life. However, the Individual has continued to consume alcohol against treatment recommendations despite his intention to abstain from alcohol and his medical condition which can be exacerbated by alcohol consumption. Even if the Individual's wife precipitated the alcohol misuse that contributed to his alleged criminal conduct, it is apparent that he has not resolved the alcohol misuse that began with that relationship. As described above, the Individual has not undergone treatment or provided sufficient evidence of modified alcohol consumption for me to conclude that he will not misuse alcohol in the future. Because the Individual's arrests are relatively recent, and he has not resolved the alcohol misuse that contributed to his alleged criminal conduct, I cannot find that the alleged offenses occurred so long ago or under such circumstances that they are unlikely to recur. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because the Individual does not allege that he was pressured or coerced into committing the alleged offenses. *Id.* at ¶ 32(b). The third mitigating condition is inapplicable because the documentation prepared in connection with the Individual's arrests, particularly the observations of the law enforcement officers who arrested the Individual, provides some reliable evidence that he committed the offenses. *Id.* at ¶ 32(c). As the prosecution of the Individual in connection with the August 2023 arrest is

ongoing, the Individual cannot have demonstrated restitution or compliance with the terms of parole or probation. Other than the passage of approximately one year since his most recent arrest, the Individual has not identified any basis to conclude that he is rehabilitated. Absent more compelling evidence, I cannot conclude that the fourth mitigating condition is applicable. *Id.* at ¶ 32(d).

For the aforementioned reasons, the Individual has not demonstrated 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 G, I, 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 I, but not the security concerns under Guideline G and Guideline 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