United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)		
		)		
Filing Date:	May 30, 2024	)	Case No.:	PSH-24-0131
		)		
		)		

Issued: November 14, 2024

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXX (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*. (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

I. Background

The Individual is employed by a DOE Contractor, in a position for which he holds a security clearance. In late November 2023, the Individual voluntarily entered an inpatient residential alcohol treatment program (Inpatient Program) and requested treatment for "alcohol abuse issues." Exhibit (Ex.) 12 at 92, 94.[2] The Inpatient Program's Pre-Admission Screening indicates that the Individual was consuming alcohol to cope with depression and anxiety, and after fighting with his fiancé, his family recommended that he seek treatment for his alcohol use. *Id*. at 104, 111. The Individual told the Inpatient Program that he was "drinking and driving a lot" and "would have ended up in a car accident," that he was missing work because of his drinking, and that he continued to consume alcohol even though he knew he had "physical or psychological problem[s] that may be made worse" by consumption of alcohol. *Id*. at 93, 109–110. He also told the Inpatient

[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 exhibits submitted by the 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 the DOE.

Program that in 2010, he was arrested and charged with Driving While Intoxicated (DWI).[3] *Id*. at 111. The Inpatient Program's Medical Director diagnosed the Individual with Alcohol Use Disorder (AUD), Severe. *Id*. at 89. The Individual's employer subsequently reported the Individual's receipt of alcohol treatment to the Local Security Office (LSO). Ex. 6; Ex. 7; Ex. 8; Ex. 9; Ex. 10.

In January 2024, the LSO issued a Letter of Interrogatory (LOI) to the Individual requesting additional details about his alcohol consumption and alcohol treatment. Ex. 11. In the LOI, the Individual reported that before seeking treatment, he was consuming "4-6 beers/shots" two to three days out of his four days off from work, he would drink to intoxication "2-3 days out of [his] 4 days off from work," and that this level of consumption was "creating a pattern and habit" that he wanted to change before it started negatively impacting important aspects of his life. *Id*. at 45, 49. He also reported that his use of alcohol "did not initially have a negative impact on [his] job or [his] ability to work," did not "negatively impact[his] judgement or reliability," and did not negatively impact his physical or emotional health. *Id*. at 49–50. Finally, the Individual reported that the Inpatient Program did not provide him with a diagnosis. *Id*. at 46.

Due to the security concerns raised by the Individual's LOI responses, the LSO referred the Individual for an evaluation by a DOE-contractor Psychologist (DOE Psychologist), who conducted a two-and-a-half-hour clinical interview of the Individual in February 2024 and issued a report (the Report) of his findings. Ex. 12. Based on his evaluation of the Individual, the DOE Psychologist opined that the Individual met sufficient diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (*DSM-5-TR*) for a diagnosis of Alcohol Use Disorder (AUD), Severe, without "adequate evidence of rehabilitation or reformation." *Id*. at 62–64.

In April 2024, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 7–8. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. *Id*. at 5–6.

In May 2024, the Individual requested an administrative hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). Ex. E; Ex. 2. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from five witnesses: the Individual, the Individual's wife, the Individual's mother, the Individual's Employee Assistance Program (EAP) Counselor, and the DOE Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-24-0131 (Tr.). Counsel for the DOE submitted 14 exhibits, marked as Exhibits 1 through 14. The Individual submitted eight exhibits, marked as Exhibits A through H.

II. The Summary of Security Concerns

[3] The results of the Individual's background investigation indicate that after his arrest, the Individual was administered a breathalyzer test, the result of which showed the Individual's blood alcohol content (BAC) was ".09 or .10." Ex. 14 at 277.

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1 at 5–6.

A. Guideline E

Under Guideline E, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are the "[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations, . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities[.]" *Id.* at ¶ 16(a). Under Guideline E, the LSO alleged that:

1) In his January 2024 LOI response, the Individual denied any negative impact his alcohol consumption may have had on his emotional or physical health, but medical records from the Inpatient Program indicate that the Individual admitted to continued alcohol consumption despite knowing that "he had a physical or psychological problem [that was] made worse by use of substances." Ex. 1 at 5;

2) In his January 2024 LOI response, the Individual denied any negative impact his alcohol consumption may have had on "his ability to work" or his job. *Id.* However, the medical records from the Inpatient Program indicate that the Individual stated that his alcohol consumption caused him to miss work and "interfered with his management of work." *Id.*;

3) The Individual indicated in his January 2024 LOI response that he did not receive a diagnosis following the counseling/treatment he received while in the Inpatient Program. *Id.* However, medical records from the Inpatient Program indicate that a medical professional at the recovery center diagnosed the Individual with AUD, Severe. *Id*.; and

4) The Individual stated in his January 2024 LOI response that "he did not believe that his judgement or reliability was negatively impacted by his alcohol use." *Id.* However, medical records from the Inpatient Program indicate that the Individual "acknowledge[d] driving while intoxicated on multiple occasions and acknowledged [that] he could have ended up in a car accident due to drinking and driving a lot." *Id.*

The LSO's invocation of Guideline E is justified.

B. Guideline G

Under Guideline G, "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. Conditions that could raise a security concern under Guideline G include: "alcohol-related incidents away from work, such as driving while under the influence[,]" the "habitual or binge consumption of alcohol to the point of impaired judgment[,]" and a "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder." *Id*. at ¶ 22(a), (c), and (d). Under Guideline G, the LSO alleged the following information regarding the Individual's alcohol-related diagnoses:

1) On February 20, 2024, the DOE Psychologist evaluated the Individual and "concluded that the Individual meets the DSM-5-TR criteria for AUD, Severe." Ex. 1 at 6. The Individual "has a history of consuming alcohol to intoxication at least once a month and he is a habitual consumer of alcohol. There is not adequate evidence of rehabilitation or reformation." *Id*.; and

2) Medical records from the Inpatient Program reflect that the Program's Medical Director diagnosed the Individual with AUD, Severe. *Id*.

The LSO also alleged the following information regarding the Individual's alcohol consumption:

1) From July 2023 to November 28, 2023, the Individual worked four days-on, followed by four days-off. *Id*. As indicated in the DOE Psychologist's report, the Individual initially consumed three to four beers and "one to two shots of vodka in a sitting, for approximately four consecutive days while he was scheduled off work." *Id*. Over time, this rate of consumption increased to "approximately one six pack of [beer] and more than two shots of vodka, on the days he was off work." *Id*.; and

2) From July 2023 to November 28, 2023, the Individual worked four days-on, followed by four days-off, and he admitted to consuming alcohol to the point of intoxication "two to three days out of the four days he was off from work." *Id*.

The LSO also cited the Individual's September 17, 2010, charge for DWI, and that his blood alcohol content was ".09/.10." *Id*. The LSO's invocation of Guideline G is justified.

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 the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be

clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting their eligibility for an access authorization. The Part 710 regulations are drafted 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 and Hearing Testimony

During an enhanced subject interview in May 2022, the Individual was asked, by the investigator, about the circumstances of his September 2010 DWI. According to the report of the investigation, the Individual stated that he consumed two alcoholic drinks while at a concert, and while driving home, he was pulled over by a police officer for failing to completely stop at a stop sign. Ex. 14 at 277; Tr. at 78. At some point after his arrest, the Individual was given a breathalyzer test, which returned a ".09 or .10 blood alcohol content." Ex. 14 at 277. The Individual was arrested and charged with DWI. *Id.* at 189.

Upon admission to the Inpatient Program in November 2023, the Individual told the Inpatient Program that he was consuming "about a pint a day of hard alcohol." Ex. 12 at 92. The record of the pre-admission screening for the Inpatient Program states that the Individual reported experiencing "withdrawal symptoms[,] including but not limited to[,] body aches, tremors, sweats, increased anxiety . . . depression" and "poor sleep" after he stops drinking alcohol. Ex. 12 at 111. At 11:18 p.m. on November 28, 2023, the Individual underwent testing and his blood alcohol level was positive for alcohol consumption at a level of "0.09." *Id.* at 88. During his treatment, the Individual received a variety of services, including a "12-Step Support Group," individual and group counseling, a psychiatric evaluation, and family counseling. *Id.* at 93. The Individual also completed a "detox episode of care . . . using medications and monitoring." *Id.* at 94. The Inpatient Program's Discharge Summary indicates that during treatment, the Individual consistently attended his group and individual counseling sessions, he "was able to work on himself" and his issues with anxiety and depression, and he showed "consistent use of coping skills." *Id.* at 92. At the conclusion of treatment, the Individual was found to have "the aptitude" and skills he needs to maintain his sobriety. *Id.*

On December 22, 2023, the Individual was discharged from the Inpatient Program after twenty-four days of treatment and received a Certificate of Completion. Ex. A at 2; Ex. 12 at 92. As part of his "aftercare plan," the Individual was given an appointment to see his primary care physician and a therapist, he was provided a "list of meetings" to attend near his home with instructions to attend "[five] meetings a week," and he received a recommendation to attend a weekly alumni support group. Ex. 12 at 92, 94, 101. The Inpatient Program suggested that the Individual attend an Intensive Outpatient Program (IOP), but the Individual told the Inpatient Program he could not enroll in an IOP because he was "working two jobs." *Id.* at 94, 100; Tr. at 81. The Individual asked the Inpatient Program to give him a referral to an IOP, in case his circumstances changed. Tr. at 100. The Individual's Relapse Prevention Plan included recommendations for engaging in healthy activities, such as meditation, and using coping skills to maintain his sobriety. Ex. 12 at 102.

On January 9, 2024, after the Individual returned to work, he met with the Lead Psychologist at his employer's EAP and was placed in his employer's Fitness for Duty (FFD) program. Ex. B at 1; Ex G. As part of the FFD program, the Individual was required to abstain from alcohol and

participate in monthly PEth testing. Ex. B at 1; Ex. G. The Individual also participated in individual therapy, weekly abstinence support group meetings, an alcohol education class, and Alcoholics Anonymous (AA) meetings once every two weeks. Ex. B at 1; Ex. G.

On January 16, 2024, the Individual began meeting with a Clinical Psychologist, through his employer's EAP. Ex. 12 at 60; Ex. B at 3. A September 9, 2024, letter from the Clinical Psychologist indicates the Individual's treatment consisted of weekly psychotherapy sessions, during which he was able to "explore issues in-depth with honesty" and his family's history related to alcohol use. Ex. B at 3. The letter also indicates that the Clinical Psychologist found the Individual's voluntary admission into alcohol treatment, which she had not seen before in her practice, "contributed to his lack of psychological awareness regarding the process and protocols of inpatient treatment" and that "[o]ne of the issues that [they] dealt with was his lack of awareness that he had a diagnosis when he was discharged" from the Inpatient Program. *Id.* at 4. The Clinical Psychologist provided the Individual with a "working diagnosis" of AUD, Severe, in Sustained Remission, and opined that his prognosis is positive. *Id.*

During his February 2024 psychological evaluation, the Individual told the DOE Psychologist that his alcohol consumption increased once his third child was born, in July 2023. Ex. 12 at 58. He explained that during his days off from work, he would purchase a six-pack of beer and a bottle of vodka, and he would then consume "three to four beers and one to two shots of vodka in a sitting." *Id.* Over time, his alcohol consumption increased, and he would consume an entire six-pack of beer, along with more vodka. *Id.* He stated he realized his alcohol use was a problem when, the day before the 2023 Thanksgiving holiday, he woke up with a hangover but continued to drink. *Id.* He then told his wife[4] he needed to "do something," and she helped him find the Inpatient Program to seek treatment. *Id.* The Individual told the DOE Psychologist that he last drank to intoxication on November 27, 2023, at which time he consumed "4/6 beers/shots over a two-to-three-hour period." *Id*. at 58. However, the DOE Psychologist opined that the Individual also drank to intoxication again the following day, on November 28, 2023, based on the result of the alcohol test the Individual was administered upon his arrival at the Inpatient Program. *Id.* at 59. The Individual also denied that the Inpatient Program diagnosed him with an AUD. *Id.*

As part of the evaluation, the Individual underwent alcohol testing, in the form of a Phosphatidylethanol (PEth)[5] test, the result of which was negative for alcohol consumption, which the DOE Psychologist opined was consistent with his reporting that he had not consumed "a measurable amount of alcohol in the last 28 days." *Id*. at 61–62, 81–82. However, the Report indicates that during his clinical interview, the Individual acknowledged that he had failed to "fulfill major role obligations" due to his alcohol use, that he had continued to consume alcohol despite the "persistent" problems it has caused to his personal, physical and psychological

[4] At the time the Report was drafted, the Individual's wife was still his girlfriend and is accordingly referred to as his girlfriend in the Report.

[5] The Report indicates that PEth is "a molecule made only when ingested alcohol reaches the surface of the red blood cell and reacts with a compound in the red blood cell membrane." Ex. 12 at 61. It also indicates that "[b]ecause nothing but ethyl alcohol can make PEth in the red blood cell, the PEth test is 100% specific for alcohol consumption[.]" *Id.* Further, "a PEth level reflects the average amount of alcohol consumed over the previous 28-30 days" and a PEth result "exceeding 20 ng/mL is evidence of 'moderate to heavy ethanol consumption." *Id*.

wellbeing, and that he had experienced withdrawal symptoms since he stopped consuming alcohol on November 28, 2023. *Id*. at 58, 62.

After interviewing the Individual, the DOE Psychologist consulted with some of the Individual's treatment providers about the progress of his treatment. Ex. 12 at 59–60. The Lead Psychologist reported that the Individual was "proactive and committed to self-improvement" during his treatment. *Id.* at 60. The Clinical Psychologist reported that she meets with the Individual weekly, and their therapy "focuses on family issues such as his maternal grandfather's age and illness." *Id.* The Marriage and Family Therapist that the Individual saw at the Inpatient Program told the DOE Psychologist that the Individual was "actively engaged" in treatment and "continues to make positive alumni check-ins" with the Inpatient Program. *Id.* The Family Therapist also reported that his prognosis for the Individual was positive. *Id.* The DOE Psychologist diagnosed the Individual with AUD, Severe. *Id.* at 64. He found the Individual "attempted rehabilitation" by completing the Inpatient Program, but he found the Individual's engagement with aftercare to be "minimal," "unconfirmed," and "at a frequency less than what he agreed to in his discharge and relapse prevention plan with [the Inpatient Program]." *Id.* To show rehabilitation from his AUD, the DOE Psychologist recommended that the Individual enroll in an IOP, consistently engage in aftercare support for 12 months, and submit to monthly PEth testing. *Id.* To show reformation from his AUD, the DOE Psychologist recommended the Individual remain abstinent from alcohol for 12 months, supported by monthly PEth testing. *Id*.

From May 2, 2024, through June 6, 2024, the Individual attended a six-week Alcohol Awareness Class, which was provided through his employer's EAP, and the Individual received a Certificate of Completion at the end of the class. Ex. A at 1; Ex. B at 2; Tr. at 13–14. On July 25, 2024, the Individual began a 12-week alcohol "support group" called "Maintaining Changes," and had attended five meetings through September 2024.[6] Ex. B at 2; Tr. at 13–14, 19. A letter provided by the EAP Counselor indicates that during his classes, the Individual participated by "interacting, sharing, giving feedback about topics, and [expressing] how it relates to him." *Id.* The Individual also submitted six letters of recommendation, from four supervisors and two colleagues. Ex. B at 5–11. The letters contained positive descriptions of the Individual's progression through the FFD program, his character, and the quality of his work with his employer. *Id*. The Individual also submitted documentation showing he underwent monthly PEth testing, from January 2024 through September 2024, the results of which were all negative for alcohol consumption. Ex. C; Ex. G.

A letter from the Lead Psychologist indicates that as of September 2024, the Individual has been compliant with all FFD requirements, including unannounced breath testing," and all of the Individual's alcohol testing had been negative. Ex. G. She noted that the Individual has been "engaged in the recommended course of individual therapy and abstinence support groups[,]"as well as AA and the . . . EAP Alcohol Education class." *Id*. The Lead Psychologist also indicated that she discussed IOP enrollment with the Individual, as recommended by the DOE Psychologist. *Id*. However, she opined that after discussing the matter, she determined that because the Individual was "demonstrating success" with his current treatment program, it was "likely [that he] would not have qualified for the higher level of care." *Id*. The Lead Psychologist also indicated that the Individual's present level of care was "one that is more easily sustainable long term, and likely to provide ongoing support." *Id*.

[6] The EAP Counselor testified that all participants must remain abstinent from alcohol, and that abstinence is the only requirement of the group. Tr. at 19. However, the EAP "does not provide any kind of [alcohol] testing." *Id.*

At the hearing, the EAP Counselor testified that the Individual was "present, alert, interactive" and exhibited "very good participation" at the group meetings. Tr. at 16. She confirmed that to her knowledge, the Individual "is not drinking" and "does not want to go back to drinking." *Id.* at 17, 27. She stated that the Individual has also experienced "positive life changes," and that he found the Inpatient Program to be "extremely eye-opening[.]" *Id.* She noted that because he is attending things like AA meetings, the Individual "seems engaged in his recovery." *Id.* at 18. She stated that the Individual told her that he sought treatment because the amount he was drinking had started to cause him concern, resulting in a promise to himself that he would stop consuming alcohol. *Id.* at 24–25.

The Individual's wife testified that at the time the Individual decided to seek treatment, she had some concerns with the amount of alcohol the Individual was consuming, and that she had told him as much. *Id.* at 32. She described feeling frustrated with the Individual at the time but denied any fight that ultimately resulted in the Individual seeking treatment. *Id.* at 34. She explained that although the Individual had voiced some concerns regarding the possible impact that seeking treatment would have on his employment, she told him that she "was going to stand by his side[.]" *Id.* at 33. She did not want the Individual's alcohol consumption to "get any worse than what it was[.]" *Id.* at 34–35. The Individual's wife has since seen "major improvements" in "all aspects of [the Individual's] life[,]" further stating that he is committed to his job and is adored by his children. *Id.* at 36. She also explained that he takes his treatment "very seriously" and that he is "very proactive[.]" *Id.* at 37. She indicated that instead of drinking, the Individual now spends his time working on the house and yard, spending time with his children, exercising, and attending church and church-related activities. *Id.* Further, not only do his friends respect the Individual's decision to remain abstinent from alcohol, but the Individual has not endorsed any cravings or desire to consume alcohol to his wife. *Id.* at 38–39. She also testified that they do not keep alcohol in the home, and that to her knowledge, the Individual last consumed alcohol while on the way to the Inpatient Program. *Id.* at 40.

The Individual's mother, who lives "down [the] road" from the Individual, testified that because she is a recovering alcoholic herself, she found any consumption of alcohol by her son to be problematic. *Id.* at 46–47. She was upset by the Individual's previous DWI, and since seeking treatment, she has seen "a complete 100 percent turnaround[]" in the Individual. *Id.* at 48. Now, he is "dependable[,]" "looks healthy[,]" and is "committed to himself and to his family." *Id.* Previously, the Individual "had no motivation." *Id.* at 48–49. Although there was alcohol at the Individual's wedding in August 2024, she kept her "eyes . . . on [the Individual,]" to make sure "nobody was offering him" a drink, and noted that the Individual was "having a really good sober time[.]" *Id.* at 30, 49. She indicated that the Individual has told her that he intends to remain sober, and that "this is the life that he wants now[.]" *Id.* at 50. She recounted the fact that the Individual called her to ask about the rehabilitation process, as she had undergone such a process previously. *Id.* at 52–53. The Individual's mother told him that she "was going to support him 100 percent." *Id.* at 53. She denied conducting an intervention. *Id.* She also indicated that the Individual has not endorsed any craving for alcohol to her. *Id.* at 54.

The Individual testified that he decided to enter treatment when he "saw that [he] was going down the wrong road[,]" in that he "was drinking more than [he] would have liked." *Id.* at 62. Alcohol consumption was no longer a social activity for him, and it became an unhealthy "habit." *Id.* He testified that he does not remember indicating to anyone that he engaged in an argument with his

now wife, precipitating his desire to seek treatment. *Id.* at 63. He denied any intentional dishonestly in completing the LOI and suggested that there may have been a miscommunication. *Id.* Rather, his desire to be present for his family and to keep his job are what motivated him to undergo treatment. *Id.* at 63–64. He understood that he had an issue with alcohol and acknowledged that he drank a significant amount of alcohol while on his way to the Inpatient Program. *Id.* at 64–65. However, he testified that since abstaining from alcohol, he has not "experienced a trigger[,]" despite being in situations where others are consuming alcohol around him. *Id.* at 73. The last time he consumed alcohol was when he was on his way to the Inpatient Program. *Id.* at 74. The Individual admitted that he previously attempted to stop drinking alcohol prior to attending the Inpatient Program. *Id.* at 74. On that occasion, he wanted to "get healthy [and] get in the gym just to look good." *Id.* at 74. He testified that he could not pinpoint a reason that he began drinking again, but recently his alcohol use was to cope with stress. *Id.* at 74–75. He feels that he will remain sober this time, because "treatment . . . opened [his] eyes on how bad it can actually get, and [he does not] want to experience that." *Id.* at 75. As he wants to be a good example for his children, he has no intention of drinking alcohol again. *Id.* at 75–76. Although the Individual admitted that he lost some friends following his commitment to sobriety, he "noticed . . . [that he] can have just as much fun" without consuming alcohol. *Id.* at 77.

He indicated that he introduces himself as an alcoholic at AA meetings, which he attends every other week, and that he is currently "going back between [steps nine and eleven] of the Twelve Steps. Tr. at 66–67, 93. With regard to his AA meeting attendance, the Individual attends a "24-hour" online meeting. *Id.* at 70. Through these meetings, he has been able to enjoy the comradery of fellow attendees, and he has learned from their "rock bottom" stories. *Id.* at 70–71. He particularly enjoys attending the EAP Maintaining Changes meeting, as the attendees are "all pretty much in the same boat[.]" *Id.* at 71–72. He also counts his wife, mother, children, a good friend, and fellow AA attendees among those in his support system. *Id.* at 74. Although he attended an Inpatient Program, the Individual acknowledged that he had not attended an IOP, as recommended by the DOE Psychologist. *Id.* at 69. He testified that he spoke to the EAP Lead Psychologist, and she indicated that "she believes that [he would not] qualify for" an IOP.[7] *Id.* at 68. The Individual testified that he had completed ten months of "aftercare" and submitted to nine PEth tests. *Id.* at 69–70.

Regarding his LOI responses, the Individual asserted that he clearly stated his work was impacted by his alcohol consumption because he "had to step away [from work] to attend [the Inpatient Program]," which did not allow him to perform his regular job duties. Ex. E at 1. He further asserted that upon being discharged from the Inpatient Program, he received a Discharge Plan, which did not indicate he was diagnosed with an AUD, so he did not consider himself as having been diagnosed.[8] Ex. E at 2; Ex. F. He learned he was diagnosed at the Inpatient Program after reading the DOE Psychologist's Report. Ex. E at 2.

The DOE Psychologist testified that he could not conclude that the Individual had shown adequate evidence of rehabilitation or reformation. Tr. at 85. Specifically, the Individual failed to complete

[7] At the hearing, the DOE Psychologist testified that with regard to this testimony, he could not "respond to [it,]" and he believes that "the only way to know is if [the Individual] seek[s] admission and they say no." Tr. at 94.

[8] The Discharge paperwork also indicates that the Individual currently uses "[m]editation, [m]indfulness, [j]ournaling, [twelve] step meetings" as "coping skills." Ex. F at 3.

an IOP, and the online AA meetings do not constitute "what [the DOE Psychologist] would consider consistent aftercare support." *Id.* Further, the most important areas of concern that the DOE Psychologist wanted the Individual to address at the time of the psychological evaluation were "discontinuing risky behaviors" by engaging in sobriety, "managing his cravings," and "successfully reengaging in family . . . and work." *Id.* at 85–86. The DOE Psychologist also noted that he was somewhat confused by the fact that the Individual stated that he had not had a drink after November 27, 2023,[9] but his BAC registered at .09 "right before midnight on November 28th." *Id.* at 87. This discrepancy caused the DOE Psychologist some "concern about [the Individual's] truthfulness." *Id.* Also, the DOE Psychologist speculated that the reason for at least one of the discrepancies between what was stated in the Inpatient Program records and what the Individual answered on the LOI could have been that "he was inebriated at the time of intake[,] and he may have exaggerated the circumstances that led to his seeking inpatient [treatment]." Tr. at 91. When asked what he wanted to see the Individual do to show adequate evidence of reformation or rehabilitation at the time of the hearing, the DOE Psychologist testified that he wanted to see the Individual attend "[a] consistent aftercare program once a week with [a] professional . . . who consider[s] what they do to be treatment" or "enroll in an IOP." *Id.* at 93–94. The DOE Psychologist determined that the Individual's diagnosis at the time of the hearing was AUD, Severe, in early remission. *Id.* at 95.

V. Analysis

A. Guideline G

The Adjudicative Guidelines provide that 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; and

[9] This testimony contradicted what the DOE Psychologist stated in his Report, which was that the Individual reported he last drank to intoxication on November 27, 2023, but acknowledged his sobriety date was November 28, 2023. Ex. 12 at 58.

(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.

Based upon the evidence before me, I find the Individual has mitigated the stated Guideline G concerns. The Individual submitted evidence he successfully completed an Inpatient Program, during which he received individual and group counseling, family counseling, and monitoring to treat his AUD, Severe, and address the anxiety and depression that contributed to his alcohol consumption. After the Inpatient Program, the Individual completed a six-week alcohol education class, and as of the date of the hearing, the Individual submitted evidence that he attends AA meetings once every two weeks, attends individual psychotherapy counseling sessions once a week, and has completed five sessions of a 12-week alcohol-support group. The Individual also submitted nine negative PEth tests to demonstrate a clear and established pattern of abstinence from alcohol, the full length of which has been approximately ten months.

Furthermore, the Lead Psychologist opined in her letter that because the Individual was demonstrating success with the alcohol treatment and support summarized above, it is likely he would not have qualified for a higher level of care provided by an IOP. Although the DOE Psychologist recommended that the Individual enroll in an IOP, or receive more consistent aftercare, to fully resolve his AUD, I find the opinion of the Lead Psychologist, who has monitored the Individual's compliance with the FFD program and additional treatment received via his employer's EAP for the past eight months, and with whom the Individual met more recently, to be more persuasive evidence of the Individual's progress. Additionally, the EAP Counselor, who leads the EAP programs, which the Individual has been attending regularly, provided evidence indicating that the Individual is committed to abstinence, as he has testified, and that he is an active participant in his recovery. The Clinical Psychologist, with whom the Individual also meets weekly, opined in her letter that she diagnosed the Individual with AUD, Severe, in Sustained Remission, that his prognosis is positive, and that he will continue to make good progress. The opinions of the Lead Psychologist, Clinical Psychologist, and EAP Counselor convince me that the Individual's prognosis is good.

Finally, I believe the Individual has very strong reasons and motivations for remaining abstinent; primarily, his family and the relationship he has with his children. Most compelling to me is that his mother has been a recovering alcoholic for 30 years. Their relationship is close, and she cares about him deeply. She testified that she watched him closely during his wedding to confirm that he did not consume alcohol, which he did not, even though it was readily available. The Individual has a solid and wide base of support offered to him by his wife, mother, and fellow AA attendees. Moreover, the Individual has remained abstinent for ten months and the testimony and evidence offered by his providers indicate that the Individual has voiced his intention to remain sober and is committed to his ongoing sobriety. Therefore, I conclude that the Individual has provided sufficient evidence of actions taken to overcome his AUD and a clear and established pattern of abstinence sufficient to mitigate the stated Guideline G concerns. Adjudicative Guidelines at ¶ 23(b).

B. Guideline E

The Adjudicative Guidelines provide that 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.

Having mitigated the alcohol concerns under Guideline G, I conclude that the concerns raised by his dishonesty in his LOI responses have also been mitigated. The Individual's Guideline E concerns are related to the concerns regarding his alcohol use. Considering the testimony that was provided at the hearing, I find the Individual and his witnesses to be very credible as to the Individual's alcohol consumption, his reasons for entering the Inpatient Program, and his additional efforts to overcome his AUD. I also find that since completing the LOI, the Individual has demonstrated genuine honesty about his struggles with alcohol, as evidenced by the fact that he recognized his maladaptive alcohol use and voluntarily sought treatment, the fact that it made him unmotivated, and that it resulted in prior involvement with the criminal justice system. At the hearing, the Individual credibly testified to the negative effects alcohol has had on his life, and the realization that he had to take urgent action to address his maladaptive alcohol use. As explained above, the Individual has taken actions to overcome his AUD, including successfully completing an Inpatient Program, engaging in weekly counseling sessions with the EAP Counselor and

Clinical Psychologist, and successfully abstaining from alcohol for approximately ten months. The Individual also received counseling focused on his issues with anxiety and depression, which were factors that contributed to his AUD.

Finally, the Individual testified, and submitted documentary evidence to support, that in completing the LOI, he was not aware the Inpatient Program diagnosed him with an AUD because his Discharge Plan, an obvious and logical place to locate information pertaining to a diagnosis, was bereft of any such information. The Individual's testimony was also supported by the Clinical Psychologist's letter, which indicated the Individual's lack of awareness of his diagnosis could have occurred because he entered the Inpatient Program voluntarily. As such, I find that the related Guideline E concerns have been mitigated and are unlikely to recur in the future. Adjudicative Guidelines at ¶ 17(d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and G of the Adjudicative Guidelines. After considering all the evidence, both 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 concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals