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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: August 8, 2018 )  
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Case No.: PSH-18-0063

Issued:

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**Administrative Judge Decision**  
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Gregory S. Krauss, Administrative Judge:

This Decision concerns the eligibility of XXXXX 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, entitled “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 is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In October 2017, he reported to the DOE that he had been arrested and charged for Driving While Intoxicated (DWI). Exhibit (“Ex.”) 10 at 2, 6; Ex. 3 at 1. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual in February 2018. Ex. 14 at i. Because the Individual’s conduct raised security concerns that the PSI did not resolve, the LSO requested that the Individual undergo an evaluation by a DOE consultant-psychologist (“DOE Psychologist”). Ex. 3 at 1; Ex. 11 at 1. After performing an evaluation of the Individual, the DOE Psychologist diagnosed the Individual with Substance Abuse Disorder-Alcohol of moderate severity<sup>2</sup>, based on criteria in the *Diagnostic and Statistical Manual of the American Psychiatric Association, 5th Edition* (“DSM-5”). Ex. 11 at 10. The DOE Psychologist further concluded that there was not sufficient evidence of the Individual’s rehabilitation. *Id.*

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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 a “security clearance.”

<sup>2</sup> Under the *DSM-5*, this diagnosis is also referred to “Alcohol Use Disorder, Moderate.”

In July 2018, the LSO began the present administrative review by issuing a Notification Letter to the Individual informing him that information in the DOE's possession had created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, titled "Summary of Security Concerns," the LSO explained that this information raised security concerns under Guidelines G and J of the Adjudicative Guidelines, which respectively regard alcohol consumption and criminal conduct. The Notification Letter also informed him that his security clearance had been suspended and that, pursuant to 10 C.F.R. § 710.21, he was entitled to a hearing before an Administrative Judge.

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on August 9, 2018. On October 5, 2018, I conducted an administrative hearing concerning this matter. At the hearing, I took testimony from the Individual, a friend, a friend and former supervisor, an acting supervisor, and the DOE Psychologist. The LSO introduced 16 numbered exhibits into the record, marked as Exhibits 1 through 16. The Individual introduced two lettered exhibits into the record, marked as Exhibits A through B.

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

As indicated above, the Notification Letter informed the Individual that information in the possession of DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines G and J of the Adjudicative Guidelines. The first of these Guidelines, Guideline G, is titled "Alcohol Consumption." It provides that "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Guideline G at ¶ 21. Under Guideline G, alcohol-related incidents at work, such as reporting for work or duty in an impaired condition, or alcohol-related incidents away from work, such as driving under the influence, can raise a security concern. *Id.* at ¶ 22(a), (b). Diagnosis of alcohol use disorder by a duly qualified mental health professional, can also raise a security concern. *See id.* at ¶ 22(d).

As support for its application of Guideline G, the LSO relied upon the DOE Psychologist's diagnosis of the Individual with Substance Use Disorder-Alcohol of moderate severity, under the DSM-5, without evidence of rehabilitation. Ex. 1 at 1. The LSO further cited the Individual's failed attempts at abstaining from alcohol despite receiving intensive outpatient treatment in 2014 and 2017, and despite stating in a December 2014 PSI and in a February 2018 PSI that he intended to remain abstinent. The LSO additionally indicated that the Individual had been involved in alcohol-related incidents at work and away from work. Specifically, the LSO stated that the Individual tested positive for alcohol on breath alcohol tests he took while at work on October 24, 2014. The LSO also alleged that the Individual had been arrested and charged with DWI in October 2017 and that he had registered a 0.15 on a blood alcohol test taken at the time of the incident. *Id.* at 2. Finally, the LSO alleged that the Individual was arrested and charged with Public Intoxication in September 2005 and with Minor in Possession in March 1999. Based on these alleged facts, the LSO properly invoked Guideline G.

Guideline J of the Adjudicative Guidelines, titled “Criminal Conduct,” provides that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” and “calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. A pattern of minor offenses, or evidence of criminal conduct regardless of whether the individual was formally charged, prosecuted, or convicted, can raise security concerns under Guideline J. *Id.* at ¶ 31(a), (b). In support of its application of Guideline J, the Notification Letter listed the Individual’s DWI arrest in October 2017, his arrest for Public Intoxication in 2005, and a citation for speeding in January 2004. These allegations justify the LSO’s invocation of Guideline J.

### **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his 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. 10 C.F.R. § 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**

#### **A. History of Alcohol Use and Arrests**

Over the past two decades, the Individual has been charged with several criminal offenses, many of them alcohol-related. In March 1999, when he was 17 years old, he attended a party where alcohol was consumed. Ex. 15 at 30-33. When the police arrived, he was arrested and charged with Minor in Possession. *Id.* at 31; Ex. 14 at 101-102. In January 2004, the Individual was cited by police for speeding. Ex. 14 at 103; Ex. 15 at 35. The Individual testified at the hearing that this speeding ticket was not alcohol-related. Tr. at 66. In September 2005, the Individual was arrested and charged with Public Intoxication. Ex. 13 at 26-27; Ex. 15 at 25-26. The Individual was outside a bar observing a fight. Ex. 15 at 26. He had consumed about six or seven beers over about three or four hours. *Id.* at 28-29. He recalled the police were arresting people at the scene who had been drinking, and that he was arrested because he admitted to drinking when asked. *Id.* at 26-28.

According to the Individual, from around 2009 to 2014, he typically consumed about one or two 12-ounce beers a week after work. *See id.* at 62-63. On Friday and Saturday evenings, he would consume about five 12-ounce beers over four to six hours. *Id.* at 63-64. He recalled that, on around four or five occasions between 2009 and 2014, he drank more heavily and may have consumed up to 12 beers as well as some mixed drinks. *Id.* at 65-66. At the hearing, a friend and co-worker of the Individual testified that he typically observed the Individual consuming one or two beers and that he had never seen the Individual extremely intoxicated. *See Tr.* at 32, 40. The friend regularly socializes with the Individual and has known him for over 10 years. *Id.* at 38, 44.

A former supervisor of the Individual, who oversaw the Individual's work at a DOE site for around five years starting in 2012, testified that the Individual had been one of his "go-to guys" and best workers. *Tr.* at 9-10, 13, 17. The former supervisor never observed the Individual intoxicated at work or showing signs of being hungover. *Id.* at 12. Another hearing witness, an acting supervisor who led the Individual's work team until about six weeks before the hearing in October 2018, similarly expressed that the Individual was reliable and a hard worker, and that the Individual had never appeared affected by alcohol at work. *Id.* at 48-51.

On the morning of October 24, 2014, the Individual blew a 0.043 and later a 0.039 on breath alcohol tests administered by his employer. *Ex.* 15 at 7; *Ex.* 13 at 29. This was above his employer's limit of 0.02. *Ex.* 11 at 2. The Individual claimed he had been at a bar playing darts the previous evening and had consumed about 10 12-ounce beers and two shots of liquor between 5:45 p.m. and 10:10 p.m. *Ex.* 15 at 9-10. According to the DOE Psychologist, based on metabolism rates, at around 10 p.m. the previous evening the Individual would have had a Blood Alcohol Concentration (BAC) of about 0.19. *Ex.* 11 at 5; *Tr.* at 104.

After the positive alcohol test, the Individual sought treatment from his employer's Employee Assistance Program (EAP). *Ex.* 15 at 17; *Ex.* 7 at 2. On October 27, 2014, he met with a counselor ("Counselor") for the EAP, who recommended that he participate in an Intensive Outpatient Program (IOP) she administered. *Ex.* 15 at 17; *Ex.* 7 at 2. The Individual completed the IOP, which involved group meetings from 6 p.m. to 8:30 p.m., Mondays through Thursdays, for six weeks until mid-December 2014. *See Ex.* 15 at 19-21; *Ex.* 7 at 2. During the time he was in the IOP, the Individual abstained from alcohol. *Ex.* 14 at 66. On December 11, 2014, shortly before he completed the IOP, the LSO met with the Individual for a PSI. *Ex.* 15 at i, 21. The Individual stated during the PSI that the Counselor had recommended that he abstain from alcohol and that he agreed with her opinion.<sup>3</sup> *Id.* at 22. He further stated, regarding his future intentions: "I have no intentions of using alcohol." *Id.* at 77.

The Individual returned to drinking about two weeks after completing the IOP, which was within weeks of the December 2014 PSI. *Ex.* 14 at 70-71. He recalled that he would drink about six to eight drinks, every other weekend, over a Friday and a Saturday. *Id.* at 71-72, 76. He would also

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<sup>3</sup> In February 2015, the Individual was evaluated by a DOE consultant-psychologist, a different expert than the one who would evaluate him in 2018. This consultant-psychologist met briefly with the Individual and did not formally diagnose him any Alcohol Use Disorder. *Ex.* 14 at 94; *Ex.* 13 at 7. The DOE consultant-psychologist nevertheless made several treatment recommendations, including that the Individual abstain from alcohol for 12 months, participate in aftercare, and take random alcohol tests. *Id.* at 7-8.

drink one or two shots of hard liquor once or twice a month. *Id.* at 71-72. For a year after the IOP, the Individual continued to see the Counselor about once a month. *Id.* at 67-68. He then discontinued the meetings because he felt that there was nothing for them to discuss. *Id.* at 68-69.

In mid-2017, the Individual began experiencing certain stressors in his life. In June 2017, the Individual had shoulder surgery, which required him to take three months of medical leave to recover. *Id.* at 37; Ex. 11 at 5. The Individual had been aware, since he was a child, that he had Obsessive Compulsive Disorder (OCD). Ex. 14 at 38. During the time he was at home recovering, his OCD worsened. *Id.* at 37-38; Ex 11 at 5. According to the Individual, he increased his drinking to about 12 12-ounce beers per week, or about two beers every other day. Ex. 14 at 72-73. As of around September 2017, he and his wife were also going through a separation. *Id.* at 84. After mentioning to a friend that he was having thoughts of suicide, his friend took him to a psychiatric hospital. *Id.* at 84-86; Ex. 11 at 5. He stayed at the hospital for three days. Ex. 14 at 85. A psychiatrist at the hospital diagnosed him with OCD, as well as anxiety and depression, and prescribed him medication to treat the OCD. *Id.* at 39-40.

The Individual recalled that, in mid-October 2017, he felt “really down” due to his separation from his wife. Tr. at 87. On the evening of October 15, 2017, the Individual consumed a beer at home, then went out to one or more bars. Ex. 14 at 14-15; Ex. 9 at 6. Over a two or three hour period, he drank an additional five 16-ounce beers and three shots. Ex. 14 at 14-15; Ex. 11 at 3. The Individual had also taken Klonopin, a medication prescribed for his OCD. Ex. 14 at 40. The Individual decided to drive home. *Id.* at 12. At the hearing, the Individual asserted that he usually takes Uber if he has been drinking but that on this night, “I wasn’t myself.” Tr. at 85-86. He indicated that his judgment was affected by the interaction of the Klonopin with the alcohol. *See id.* at 85-86.

As the Individual drove home, he sideswiped a parked truck. Ex. 14 at 18-19. The owner of the truck called the police, who came to the scene. *Id.* at 19-20. According to a police report on the incident, the Individual was slurring his speech and having difficulty standing and walking. Ex. 9 at 5. The police took the Individual to a hospital for a blood test. Ex. 14 at 20. The test results showed a BAC of 0.15. Ex. 14 at 13; Ex. 11 at 4. The Individual was taken to jail, where the next morning he paid a bond and was released. Ex. 14 at 26; Ex. 10 at 7.

The Individual reported his DWI arrest to the DOE. Ex. 10 at 2, 6. On October 21, 2018, the Individual entered an inpatient alcohol treatment facility recommended by the Counselor. Ex. 14 at 26-28; Tr. at 78. He remained there for 28 days. Ex. 14 at 28. The facility prescribed him Campral, a medication to help him reduce cravings for alcohol, and adjusted his OCD medications. *Id.* at 32-33, 35. The day after leaving the treatment facility, the Individual began attending Alcoholics Anonymous (AA) meetings. *Id.* at 81. On or around December 9, 2017, the Individual’s wife moved out. *See id.* at 82, 97. On that day, the Individual drank to intoxication. *Id.* at 97-98. Again on that same day, he informed his mother that he was having suicidal thoughts, and his mother persuaded him to return to the psychiatric hospital. *Id.* at 83-84. He remained there for two days. *Id.* at 82. The Individual recalled that, while he was at the hospital, the psychiatrist who had previously treated him in September changed his OCD medication again. *Id.* at 90.

On February 7, 2018, the LSO conducted another PSI with the Individual. Ex. 14 at i. He reported at the PSI that because he had begun attending school, he had reduced his AA attendance to three

meetings a week. *Id.* at 81. However, he indicated that he had obtained an AA sponsor and that he planned to continue attending AA meetings. *Id.* The Individual also reported that in January 2018 he had stopped taking any OCD medication due to the side effects. *Id.* at 44, 46. He stated that he was seeing a new psychologist, whom he hoped could treat his OCD through cognitive behavioral therapy. *Id.* at 42. The Individual claimed that the last time he had consumed alcohol was on or around December 9, 2017. *See id.* at 97. He expressed that his future intention was to remain abstinent from alcohol and to keep attending AA meetings. *Id.* at 81. He recognized that his “only option is to not drink again” because he was not a person who could stop drinking after only a beer or two. *Id.* at 96. He stated that not drinking had been difficult but was “getting a lot easier.” *Id.*

On February 15, 2018, the Individual accepted a plea bargain for the DWI charge. Tr. at 64; Ex. A at 1, 5. The Individual pleaded guilty and the charge was reduced to Deadly Conduct. *See* Ex. A at 1; Tr. at 64. The Individual agreed pay a fine of \$4,000 and accept conditions including completing an alcohol education course, attending a session of a victims impact panel, and abstaining from alcohol. Ex. A at 3-4.

## **B. DOE Psychologist’s Evaluation**

After the Individual’s February 2018 PSI, the LSO decided that a psychological evaluation was necessary. Ex. 3 at 1. On March 26, 2018, the Individual met with the DOE Psychologist. Ex. 11 at 2. The DOE Psychologist produced a report on his findings on April 10, 2018. *Id.* at 11. According to the report, the Individual admitted to the DOE Psychologist during the clinical interview that he had returned to consuming alcohol. *See id.* at 6. The Individual stated that, two days prior, he had consumed three beers over three hours. *Id.* A week prior, he stated, he had consumed six beers over 10 hours. The Individual also told the DOE Psychologist that he no longer intended to maintain his abstinence and planned to continue to drink with friends. *Id.* at 6-7.

At the request of the DOE Psychologist, the Individual took two alcohol tests: (1) an ethyl glucuronide (“EtG”) test, capable of evaluating the Individual’s alcohol use within the last three or four days; and (2) a phosphatidylethanol test (“PEth”) test, capable of providing information about the Individual’s alcohol use over the previous three or four weeks. *Id.* The DOE Psychologist asked a physician to interpret the results of the test. *Id.* In a letter to the DOE Psychologist, the physician stated that the tests were both positive. *Id.* at 7. The EtG test result, according to the physician, was “consistent with heavy consumption of alcohol in the day or days before the testing,” and the PEth test result was “consistent with heavy regular consumption of alcohol.”<sup>4</sup> *Id.* At the hearing, the DOE Psychologist testified that, based on the results of the tests, he believed that the Individual had been drinking “a great deal at that point.”<sup>5</sup> *Id.* at 95. He added that this heavy drinking likely “happened over some time” and was not limited to one or two events. *Id.* at

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<sup>4</sup> The EtG test was positive at a level greater than 25,000 ng/mL. Ex. 11 at 7. The PEth test was positive at a level of 1298 ng/mL. *Id.* At the hearing the DOE Psychologist stated that he had “never seen” an EtG that was so high that it was beyond the ability of the test to measure. Tr. at 95.

<sup>5</sup> At the hearing, the DOE Psychologist described a forthcoming academic paper he co-authored on the PEth test. Tr. at 94-95. The DOE’s Hearing Counsel offered the DOE Psychologist as an expert on the PEth test, and the Individual did not raise any objections when given the opportunity. *Id.* at 97.

96. The Individual, for his part, testified at the hearing that he “feels like” he presented the DOE Psychologist with an accurate portrayal of his drinking. *Id.* at 81.

In his April 2018 report, the DOE Psychologist concluded that the Individual met the *DSM-5* criteria for Substance Use Disorder—Alcohol of moderate severity.<sup>6</sup> Ex. 11 at 9-10. The DOE Psychologist also found that the Individual suffered from a depressive disorder and from OCD, but that these conditions did not impair the Individual’s judgment, reliability, or trustworthiness. *Id.* The DOE Psychologist made four recommendations concerning the Individual’s treatment for his alcohol problem. First, the DOE Psychologist recommended that the Individual remain abstinent for a period of 12 months to demonstrate that he has control over his alcohol use. Ex. 11 at 11. Second, he recommended that the Individual actively participate in a six-week IOP, followed by aftercare for the remainder of the 12-month period. *Id.* Third, the DOE Psychologist recommended that the Individual enter into verbal therapy to help him deal with his anxiety and depression. He specifically encouraged the Individual to continue seeing the psychologist who was treating the Individual using cognitive behavioral therapy. *Id.* Fourth, he urged the Individual to find a new psychiatrist who could prescribe a new medication to treat the Individual’s OCD. *Id.*

### **C. Additional Recovery and Rehabilitation**

On July 10, 2018, the LSO issued the Notification Letter, after which the Individual requested a hearing. Ex. 2 at 1. At the hearing on October 5, 2018, the Individual testified that he had last consumed alcohol on or around April 1, 2018, shortly after his appointment with the DOE Psychologist. Tr. at 59. He claimed that very soon after the appointment, he realized he needed to quit drinking. *Id.* at 82. Around this time, the Individual’s wife moved back in to live with him. *Id.* at 88. He believes that reuniting with her helped him to stop drinking. *Id.* He stated that, around this time, it “just really kicked in” that he could lose his job and family if he kept drinking. *Id.* at 82. He claimed he no longer had alcohol cravings and that he has remained abstinent by thinking about his job and family and how it is “not worth it” to drink.<sup>7</sup> *Id.* at 87.

The Individual has not participated in any alcohol testing since his evaluation by the DOE Psychologist in March 2018. *Id.* at 80. He claimed that he could not afford to pay for the tests and that he was already under financial strain due to the cost of receiving treatment from the Counselor and the fine associated with his DWI.<sup>8</sup> *Id.* Because neither the Counselor nor the Individual’s wife testified, they could not verify that the Individual was no longer drinking.<sup>9</sup> However, the Individual’s close friend, also an employee at the Individual’s place of employment, provided testimony supporting the Individual’s claim of abstinence. The friend testified that he typically

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<sup>6</sup> In making the diagnosis, the DOE Psychologist cited the Individual’s unsuccessful attempts to maintain sobriety, the Individual’s strong desire to drink despite knowing the destructive consequences, the interference of the Individual’s alcohol use with the Individual’s job, and the Individual’s DWI. Ex. 11 at 9.

<sup>7</sup> The Individual stated at the hearing that he had stopped taking Campral, the anti-craving medication. Tr. at 86. The DOE Psychologist indicated this had occurred prior to the evaluation in March 2018. *Id.* at 100. The DOE Psychologist opined that this drug is not particularly effective. *Id.*

<sup>8</sup> According to the DOE Psychologist, a PEth test would have cost around \$150 to \$200. Tr. at 103.

<sup>9</sup> Although the Individual attempted to obtain the Counselor’s testimony, *see* Tr. at 53-54, she did not testify.

sees the Individual about one to three times a week. *Id.* at 38. Although the friend sometimes still consumes alcohol when they are together, the Individual “never participates,” the friend stated. *Id.* at 41. According to the friend, the Individual has mentioned that he is longer drinking. *Id.* The friend last observed the Individual consuming alcohol in October 2017. *Id.* at 38.

When asked about the DOE Psychologist’s report and the diagnosis within it, the Individual expressed some degree of skepticism. He stated: “I do not believe that somebody can know you within one hour, know all about your life . . . and control your future.” *Id.* at 56. Nevertheless, the Individual testified that he does not plan to drink again. *Id.* at 67. He added that “obviously, it doesn’t work” for him to drink responsibly on a limited basis. *Id.* He indicated that, although he has not yet remained abstinent for 12 months, as recommended by the DOE Psychologist, his job and his family provide him a strong motivation to no longer drink. *See id.* at 91.

The Individual described his wife and parents as important sources of support during his recovery. *Id.* at 90. In addition to his family, the Individual knows three individuals from AA meetings whom he could call if necessary, although as of the date of hearing he had not had contact with those individuals for months. *Id.* at 84-85. The close friend who testified stated that he and the Individual had spoken only a few times, and briefly, about the Individual’s alcohol problem, but that he would be willing to provide additional support to the Individual. *Id.* at 42-44.

With respect to additional treatment, the Individual has attended a victims impact panel and completed an alcohol education course, as required by the plea bargain. *Id.* at 65. He has not, however, complied with all the DOE Psychologist’s treatment recommendations. As of the hearing date, the Individual had not participated in a six-week IOP, as recommended by the DOE Psychologist. *Id.* at 57. The Individual explained that he had returned to school and was taking intensive online courses every day after work. *Id.* at 73. He indicated that participating in an IOP would not have allowed him to pursue his educational goals.<sup>10</sup> *See id.* at 73-74. The DOE Psychologist also had recommended that the Individual participate in aftercare following the IOP. The DOE Psychologist testified that, by this recommendation, he meant that the Individual should engage in some form of group-based therapy. *See id.* at 110-111. According to the DOE Psychologist, such settings are where “the real treatment . . . takes place” because individuals in recovery often demand honesty of one another and can support each other. *See id.* As of the hearing date, however, the Individual was not participating in any type of group therapy. The Individual recalled that he last participated in an AA meeting in January 2018 and explained that he had not been attending AA meetings because his focus had been on school. *Id.* at 83-84.

As for the DOE Psychologist’s recommendation that the Individual participate in verbal therapy, the Individual indicated that he had continued to see the Counselor every 7 to 10 days, but that he had not continued the cognitive behavioral therapy with the psychologist he had previously seen. *Id.* at 74, 78. The Individual claimed that instead of seeing that psychologist, he had received online cognitive behavioral therapy for three days a week over a period of two months. *Id.* at 74. This approach, he explained, was more convenient. *Id.* The Individual could not recall the name of the online therapist who treated him. *Id.* With regard to these choices, the DOE Psychologist testified

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<sup>10</sup> The Individual appears to have asserted that the costs of an IOP would have been substantial. Following the hearing, he submitted an exhibit showing that his IOP in 2014 cost around \$4,000. *See Ex. B* at 1-2. However, it appears from the exhibit that his health insurance covered some or all of this cost.



that although the Counselor's treatment was valuable, she was not trained to provide cognitive behavioral therapy and was performing more of a monitoring role. *Id.* at 109-10. He also opined that online therapy may not have permitted the same quality and depth of interaction that could occur with a face-to-face therapist. *Id.* at 75, 102.

The DOE Psychologist had further recommended that the Individual find a new psychiatrist who could prescribe new OCD medication. At the hearing, the DOE Psychologist explained that he believed that the Individual's OCD was associated with anxiety, and that this anxiety might be a "stimulus" for the Individual's drinking. *Id.* at 101, 113. The Individual stated, however, that he did not seek new medication for his OCD. *Id.* at 76. He indicated that he already had tried multiple medications for his OCD and that he was unwilling to try a new medication. *Id.* His OCD medication, he testified, was "what got me in this situation." *Id.*

The DOE Psychologist was present during the entire hearing and testified after having listened to the testimony of the Individual and the other witnesses. He asserted that when someone drinks as heavily as he believes the Individual was drinking prior to April 2018, "it is very hard not to continue to drink." *Id.* at 100. Because the Individual had not submitted to any alcohol testing, the DOE Psychologist did have confidence that the Individual was no longer drinking.<sup>11</sup> *Id.* at 103. He observed that people who have an alcohol problem "tend to have a hard time admitting it and admitting how much they drink." *Id.* at 102-103.

According to the DOE Psychologist, even assuming that the Individual had been abstaining from alcohol, the Individual had a "very poor" prognosis for remaining abstinent. *Id.* at 105. The DOE Psychologist indicated that the Individual "did not do any of the things that I had asked him to do." *Id.* at 101. The DOE Psychologist expressed doubt that the Individual fully recognized that he had an alcohol problem and suggested that this may have reduced the Individual's motivation to seek necessary treatment. *See id.* at 102, 107. Without adequate treatment and therapy, the DOE Psychologist asserted, it would be difficult for the Individual to deal with the inevitable stresses in his life without turning to alcohol. *Id.* at 105-106. He added that another reason for the poor prognosis is that the Individual has relapsed before, which increases the chances of a future relapse. *Id.* at 116. Summarizing his opinion, the DOE Psychologist stated of the Individual: "I think he's got a drinking problem, and I don't think it's well-treated." *Id.* at 108.

## V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should not be restored. I am unable to find that restoring the individual's DOE security clearance would not endanger the common defense and

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<sup>11</sup> The DOE Psychologist indicated that the Counselor also could have provided an opinion on the Individual's progress in his recovery and whether he was continuing to drink. *See Tr.* at 103. Although the Individual attempted to obtain the Counselor's testimony, *see Tr.* at 53-54, she did not testify.

security, and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

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

Guideline G describes several conditions that can mitigate security concerns arising from alcohol consumption. One of these conditions occurs when “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 good judgement.” Guideline G at ¶ 23(a). Here, this condition is not applicable. Some of the most concerning conduct at issue in this matter is the Individual’s DWI. Although the LSO has raised concerns about alcohol-related incidents from earlier in the Individual’s life, this DWI was fairly recent, only a year before the hearing. Further, although the Individual committed this offense at a time when he was going through some unusually stressful marital difficulties, it is entirely possible that this stress, or a similar stress, will recur. The Individual also has suggested that his judgment was affected on the date of his DWI arrest by the interaction between his OCD medication and the alcohol he had consumed. Even if this is true, it is not apparent that his use of OCD medication should be considered unusual or unlikely to recur. Indeed, the DOE Psychologist recommended that the Individual resume taking OCD medication. Further, too many alcohol-related incidents have occurred in the Individual’s past for the DWI to be considered an isolated incident. In particular, in light of the Individual’s positive test for alcohol work in 2014, the Individual’s DWI in 2017 cannot be disregarded as a fluke event with little chance of repeating itself.

An individual may also mitigate security concerns under Guideline G if “[t]he individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence . . . .” *Id.* at ¶ 23(b). In the instant matter, it is not evident that the Individual has fully acknowledged his problems with alcohol. During the hearing, he stated that he had a strong desire to remain abstinent. Yet, as recently as March 2018, the Individual told the DOE Psychologist that he planned to continue drinking. Further, given that the Individual did not produce an expert challenging the conclusions in the DOE Psychologist’s report, the Individual’s skepticism of that report at the hearing shows that he may still be questioning his diagnosis. His statement that his OCD medication was “what got me in this situation” also underscores that he may continue to minimize his alcohol problem.

More importantly, the Individual has not established a pattern of abstinence. Based on the evidence in the record, it cannot even be certain that the Individual is no longer drinking. Although he testified that he has abstained since April 1, 2018, he provided no test results to corroborate this claim. His friend’s testimony that he has not observed the Individual drink since October 2017 does not provide much in the way of supporting evidence, particularly since the Individual consumed alcohol on at least several occasions between October 2017 and March 2018. Even assuming that the Individual stopped drinking on April 1, 2018, he would have been abstinent for a period of about only six months as of the hearing date. This amount of time would represent commendable progress. Yet, it is significantly shorter than the period of 12 months that, according to the DOE Psychologist, is necessary to establish the Individual’s rehabilitation. Consequently, I cannot find this condition mitigates the security concerns raised by the LSO.

Another mitigating condition under Guideline G occurs when “[t]he individual is participating in a counseling or treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program.” *Id.* at ¶ 23(c). None of these circumstances applies in the instant case. The Individual testified that he continued to see the Counselor, received online therapy, and attended the victims impact panel and alcohol education course required by his plea bargain. Nonetheless, he did not comply with many of the DOE Psychologist’s treatment recommendations, including participating in a new IOP followed by an aftercare program or some form of group-based program such as AA. The DOE Psychologist further opined that the Individual’s alcohol problem is not being effectively treated. Although the Individual indicated that time and cost limited his ability to seek recommended treatment, and that he chose to prioritize school over his alcohol recovery, the fact remains that the Individual did not obtain treatment that he needed, in the view of the only expert who testified. Additionally, the Individual does have a previous history of treatment and relapse. The record shows that he attempted to remain abstinent but then relapsed on at least three occasions: (1) around late December 2014, following his treatment in an IOP; (2) in December 2018, after his treatment in an intensive alcohol treatment facility; and (3) sometime prior to the DOE Psychologist’s evaluation in March 2018, when the Individual admitted to drinking and when testing suggested he had been drinking heavily. The Individual’s history of relapse does not inspire confidence that he will be able to maintain his sobriety, at least without further treatment or demonstrated abstinence. His difficulty maintaining his sobriety in the past also raises doubts whether he has, in fact, remained completely abstinent since April 2018.

The final circumstance in which an individual can mitigate security concerns raised under Guideline G is when 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 . . . .” *Id.* at ¶ 23(d). As noted above, since the March 2018 evaluation, the Individual has not completed a new IOP or participated in aftercare, as recommended by the DOE Psychologist. Nor has he demonstrated a clear and established pattern of abstinence.

For the abovementioned reasons, I conclude that the Individual has not satisfied any of the mitigating criteria set forth under Guideline G. Accordingly, I find that he has not resolved the security concerns asserted by the LSO under Guideline G.

## **B. Guideline J Considerations**

Guideline J identifies several conditions that can mitigate security concerns arising from criminal conduct. One such condition occurs when the behavior occurred so long ago or under such unusual circumstances, that it is unlikely to recur. *Id.* at ¶ 32(a). The Individual’s arrest for Public Intoxication and the citation for speeding occurred some time ago, in 2005 and 2004, respectively. Nonetheless, as previously discussed, the Individual’s DWI occurred only a year ago, and the circumstances were not so unusual that they are unlikely to recur. Moreover, taking into account both the DWI charge and the Public Intoxication charge, but not the speeding ticket which the Individual claimed was not alcohol-related, the Individual has committed at least two alcohol-related criminal offenses as an adult. As noted above, I cannot conclude that the Individual has sufficiently addressed his alcohol consumption problem and that he is unlikely to relapse in the future. Therefore, I cannot determine that the Individual has demonstrated that it is unlikely he will

commit more alcohol-related criminal offenses in the future. Accordingly, this condition does not mitigate the security concerns raised by the LSO.

Under Guideline J, security concerns can also be mitigated when the Individual was pressured or coerced into the criminal activity. *Id.* at ¶ 32(b). That is not the case here. Another mitigating condition occurs when there is “[n]o reliable evidence to support that the Individual committed the offense.” *Id.* at ¶ 32(c). Although the Individual has raised questions about his 2005 arrest for Public Intoxication, he has not denied responsibility for any of the offenses. Additionally, regardless of the plea bargain, the evidence supporting the DWI charge is substantial and undisputed. This evidence includes an alcohol test, a police report, and information provided by the Individual regarding his drinking that evening. A final mitigating condition occurs when there is “evidence of successful rehabilitation.” *Id.* at ¶ 32(d). This condition likewise does not apply. Because the Individual has not been rehabilitated from his alcohol problem, a serious doubt remains as to whether he may again be responsible for alcohol-related criminal conduct.

For the reasons described above, I find that the Individual has not resolved the security concerns raised by the LSO under Guideline J.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not mitigated the security concerns that the LSO has raised under these Guidelines. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense or would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Gregory S. Krauss  
Administrative Judge  
Office of Hearings and Appeals