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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 10, 2023 ) Case No.: PSH-23-0084  
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Issued: August 30, 2023

**Administrative Judge Decision**

Brenda B. Balzon, Administrative Judge:

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

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. He previously held a security clearance when he worked for different contractors. Exhibit (Ex.) 7 at 48. In December 2020, the Individual completed a Questionnaire for National Security Positions (QNSP) in which he disclosed that he had two prior charges for Driving Under the Influence (DUI), one in August 1991, and one in December 1994. *Id.* at 43–44. Regarding his 1991 DUI, a Report of Investigation (ROI) from the Office of Personnel Management (OPM) reflected that the Individual was sentenced to 90 days county jail with 85 days suspended, a six-month driver’s license suspension, and one year probation. *Id.* at 63. Regarding his 1994 DUI, he was sentenced to one year of incarceration, community service, one year driver’s license suspension, required attendance at Alcoholics Anonymous (AA) meetings, and two years of probation. *Id.* at 64–65.

In February 1992, the Individual was arrested for “beer, wine, or other alcohol/tobacco age violations” and was sentenced to pay a fine. *Id.* at 62–63. He was arrested again in May 1993 for

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

“beer, wine, or other alcohol/tobacco age violations, resisting or obstructing officers, and contempt of court.” *Id.* at 63–64. All charges were dropped except for the charge of contempt of court for which he was required to pay a fine. *Id.* at 63–64.

On July 22, 1995, the Individual was arrested for felony hit and run that occurred on July 8, 1995, and was also charged with failure to report an accident, “felony driving while suspended, and inattentive driving.” *Id.* at 168–70. The police report stated that the passenger who was riding in the car while the Individual drove admitted that he was intoxicated so he allowed the Individual to drive his truck, and the Individual hit a street barricade while driving. *Id.* at 168. The passenger told the police that they had not reported the accident because they were scared they would be arrested for DUI and because the Individual had a suspended license. *Id.* The police officer told the Individual that he suspected the Individual and the passenger had not reported the accident because they had been consuming alcohol. *Id.* In response, the Individual told the police that the passenger had been passed out in the truck, “and he had been consuming alcohol” but the police report did not clarify whether the Individual was referring to himself or the passenger regarding who had been consuming alcohol. *Id.* at 169. The ROI stated that no dispositional record was found regarding the charges. *Id.* at 157.

On September 22, 2002, the Individual was cited for property damage hit and run after backing into a parked vehicle and leaving the scene on September 19, 2002. *Id.* at 161–62. He told the police officer that he was backing up his vehicle when he collided with the rear of a parked pickup truck. *Id.* at 161. The vehicle owner reported very minor damage to his truck, and the Individual told the police officer he would contact the vehicle owner to pay for the damage. *Id.* at 161.

On April 25, 2022, the Individual reported to his employer that on April 22, 2022, his security badge, which he had locked in the trunk of his car, was stolen along with his car. Ex. 11. In his September 17, 2022, Letter of Interrogatory (LOI) response, he stated that he met two men at a bar on April 22, 2022, and after the Individual had consumed a few beers, he did not want to drive, so he allowed one of the men to drive his car and they all went to another bar. Ex. 10 at 1; *See* Ex. 6 at 7 (police report dated April 22, 2022). Eventually, the Individual left the bar to search for his car but his car was missing and the two men were gone. *Id.* He reported the theft to the police, and his vehicle was located on May 4, 2022, however, his security badge was not recovered. Ex. 6 at 11; Ex. 11.

Subsequent to his LOI, in November 2022, the Individual was evaluated by a DOE-consultant psychologist (DOE Psychologist), who concluded that the Individual “often uses alcohol in excess which can lead to questionable judgment, unreliability, failure to control impulses, and increases the risk to safety and security while intoxicated,” and his laboratory results suggest a pattern of heavy alcohol consumption and binge drinking. Ex. 9 at 6–7.

As part of the Continuous Evaluation Program, the LSO discovered that on December 11, 2022, the Individual was arrested and charged with DUI and resisting or obstructing officers. Ex. 8 at 12. The LSO issued an additional LOI to the Individual on January 30, 2023, and the Individual did not report his arrest to DOE until he submitted his LOI response on February 7, 2023. Ex. 6 at 1–2, 12. Regarding the arrest, he stated that he was at a pub consuming alcohol and playing darts with his brother, when two men began an altercation with his brother. *Id.* at 2. The Individual

stated he called a taxi and waited outside with his brother, but when the men followed them outside, the Individual decided to drive his brother away from the parking lot. *Id.* The police stopped him and arrested him after he refused to take a sobriety test. *Id.* at 1–2. The Individual stated he had consumed 8 or 10 beers in a six-hour period. *Id.* at 2. He stated he did not report his arrest to the LSO because he has not yet been convicted of DUI, and he stated he thought that he did not need to report the incident until he is convicted. *Id.*

The LSO informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In the 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), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 3 at 4–8.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the DOE Psychologist. Hearing Transcript (hereinafter cited as “Tr.”). The Individual did not submit any exhibits. The LSO submitted twelve exhibits (Exs. 1–12).

## **II. Notification Letter and Associated Security Concerns**

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its concerns regarding the Individual’s eligibility for access authorization. Ex. 3 at 4. “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 DOE Psychologist’s conclusion that the Individual often uses alcohol to excess and his laboratory results suggest a pattern of binge drinking to the point of impaired judgment; and the Individual’s history of alcohol-related incidents and arrests. Ex. 3 at 4–6. The LSO’s assertions in the SSC justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO also cited Guideline E (Personal Conduct) as a basis for its concerns regarding the Individual’s eligibility for access authorization. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an Individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The SSC cited the Individual’s failure to timely report his December 2022 DUI arrest. Ex. 3 at 7. The SSC also cited that during his clinical interview (CI) with the DOE Psychologist, the Individual reported that he last consumed alcohol approximately two weeks prior to the CI. *Id.* However, his ethylglucuronide (EtG) laboratory test suggested he consumed significantly high amounts of alcohol within 96 hours of testing, and his Phosphatidylethanol (PEth) test suggested that he consumed significant amounts of alcohol over the three weeks prior to testing. *Id.* This information adequately justifies the LSO’s invocation of Guideline E.

The LSO also cited Guideline J (Criminal Conduct) as a basis for its concerns regarding the Individual's eligibility for access authorization. "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 history of arrests and citations including his alcohol-related charges. *Id.* at 7–8. The above criminal charges 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 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 his eligibility for an access authorization. The Part 710 regulations are drafted 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**

On November 14, 2022, the Individual underwent a psychological evaluation by the DOE Psychologist which included a CI. Ex. 9 at 1. During the CI, he told the DOE Psychologist that as a result of his DUI charges in 1991 and 1994, he was court ordered to take Antabuse medication and attend AA. *Id.* at 5. He also told the DOE Psychologist that he had a previous diagnosis of alcohol use disorder (AUD). *Id.* at 4. The Individual stated that after a year of attending AA, he began to realize it was helpful, and he told the DOE Psychologist that after completing his AA program, he completely abstained from alcohol for several years while married to his first wife. *Id.* at 5.

The Individual told the DOE Psychologist that currently and for the past several years, he only consumed alcohol on a monthly or less than monthly basis, and he typically consumed five to six beers on a Saturday evening. *Id.* at 5. He reported to the DOE Psychologist that he last consumed alcohol approximately two weeks before the CI. *Id.* As part of the evaluation, the Individual underwent an EtG test which was positive at a level of 4482 ng/mL, and a PEth test, which was

positive at a level of 170 ng/mL. *Id.* The DOE Psychologist's report (Report) stated the Individual's EtG test results suggested the Individual consumed significantly high amounts of alcohol within the 96 hours prior to the test. *Id.* The Report stated the Individual's PEth results "suggest that he has consumed significant amounts of alcohol over the preceding three weeks (e.g., 4 drinks/day . . . or several very big episodes of bingeing)." *Id.* at 5–6.

Ultimately, the DOE Psychologist concluded that the Individual's lab results were suggestive of a pattern of heavy alcohol consumption and binge drinking. *Id.* at 6. He further concluded that the Individual often used alcohol in excess, which could lead to questionable judgment, unreliability, and increases the risk to safety and security while intoxicated. He concluded that the Individual had not shown adequate evidence of rehabilitation or reformation, nor was there evidence of a favorable prognosis. *Id.* at 6. The DOE Psychologist recommended that the Individual enter into an outpatient alcohol rehabilitation program, with treatment provided over nine to 17 weeks, and complete the program and discharge recommendations. *Id.* at 7. As an alternative treatment, the DOE Psychologist recommended participation in AA at least 3 times per week to include a home group and an AA sponsor, and maintain abstinence with PEth tests every two months. *Id.*

At the hearing, the Individual admitted to the SSC allegations regarding his arrests except for the 1995 arrest and one of the charges from his December 2022 arrest. Transcript (Tr.) at 13, 15, 18–19, 21, 34, 37. He denied the 1995 arrest for felony hit and run, driving with suspended license, and inattentive driving. *Id.* at 15–16. A police report included in the OPM ROI reflected the 1995 arrest and charges and listed the Individual's name as the arrestee. The name and birthdate in the police report are the same ones that the Individual provided in his QNSP. Ex. 7 at 16; 168–70. The Individual stated that he does not remember being arrested for hit and run in 1995 and asserted that there was another person with the same name as him who lives in the same town. *Id.* at 15–16. He indicated that the 1995 arrest may have involved this other person. *Id.* at 15.

The Individual admitted that he was arrested on December 11, 2022, for DUI. *Id.* at 34. His testimony regarding the incident was consistent with his February 7, 2023, LOI response. Tr. at 34–38; Ex. 6 at 1–2. He admitted that by the time he called the taxi, he had consumed eight to ten beers, however, he ultimately chose to drive and was arrested for DUI. The Individual testified that he disagrees with the charge for resisting arrest. Tr. at 37. He stated that as he was speaking to someone about the arrest, a police officer suddenly "hammered [him] from behind, [placing him] face-down on the asphalt." *Id.* The Individual stated that when he tried to get up, the police officer tackled him and said, "quit resisting," and started grabbing the Individual's arm. *Id.* The Individual said that his arm started cramping so he tried to explain that he needed a moment to address his arm cramp, but the police officer again told him to stop resisting. *Id.* at 37–38.

The Individual asserted that when he chose not to report his December 2022 DUI to the LSO, he was not trying to avoid having DOE find out about his arrest, but rather, he asserted he had misunderstood the reporting requirements. *Id.* at 39. He asserted that he believed that he was not required to report his arrest since he had not yet been convicted of DUI. *Id.* at 39. The Individual admitted that he had received, through his employer, the annual security refresher training which addressed reporting requirements. *Id.* He testified that the disposition of the charges for DUI and resisting arrest is indeterminate, and he has no documentation of the current status of the charges. *Id.* at 41, 43. He stated he believes that because this is his third DUI offense, his sentence will

involve incarceration or house arrest, and probation. *Id.* at 41, 43. He anticipated that he will have to have an Interlock device on his car, be placed on probation, and undergo urinalysis testing. *Id.* at 41–42.

Regarding his reported alcohol use during the CI with the DOE Psychologist, the Individual testified that he thinks he had his CI on a Monday, and on the Saturday night before the CI, he drank approximately six beers. *Id.* at 26–27. He stated he got a “good buzz but [he] didn’t get drunk.” *Id.* at 50. The Individual asserted that he thought he had told the DOE Psychologist that he consumed alcohol on the prior Saturday, but he indicated that because he was not wearing his hearing aids, he may have misunderstood the DOE Psychologist’s question. *Id.* at 26. He stated that he noticed the discrepancy when he read the Report, and he saw the SSC allegations regarding the discrepancy of his reported alcohol use as compared with his EtG and PEth results, however, he did not acknowledge the discrepancy to DOE because he wanted to clarify it at the hearing. *Id.* at 26–27, 53. He also testified at the hearing that approximately two or three weeks prior to his alcohol tests, he drank beer to the point of intoxication. *Id.* at 49. Regarding his alcohol test results, he questioned whether the positive test results might have occurred because he uses Scope mouthwash daily and he believes it contains alcohol. *Id.* at 29–30.

The Individual stated that his father’s recent death has affected his alcohol use, and indicated that he drank alcohol after his father’s death. *Id.* at 45. He stated that after his father died on June 6, 2023, he went out with his brother and cousin and they got “pretty well hammered.” *Id.* at 32–33. He testified that he last consumed alcohol on the Thursday before the hearing when he drank approximately six beers, and stated he still consumes alcohol “every now and then.” *Id.* at 43–44.

The Individual testified that subsequent to his father’s death, he feels that he is at a crossroad in his life and is open to taking the right path including following the DOE Psychologist’s recommendations. *Id.* at 32–34, 45, 47. He admitted that since his December 2022 DUI, he has not attended any AA meetings, has not attended any individual or group therapy related to alcohol, and has not engaged in any other rehabilitative efforts except choosing to stay home instead of going out socially. *Id.* at 43. He stated he has not yet taken action because he is “probably scared to know that [he] apparently do[es] have a problem but [does not] see it as having a problem because [he is] not drinking every day.” *Id.* at 44.

The DOE Psychologist testified regarding the findings in his Report. *Id.* at 62. His Report stated that while the Individual’s prior diagnosis of AUD made it more likely that he has a current diagnosis, he concluded that “a current diagnosis of AUD could not be definitely determined without the Individual’s full disclosure regarding his frequency and amount of alcohol consumed, and the impact on his functioning.” Ex. 9 at 6. The DOE Psychologist explained that there are 11 criteria for an AUD diagnosis, but a diagnosis would require the Individual to admit criteria such as he continues to consume alcohol and it causes problems. Tr. at 77. He testified, “If someone does [not] see problems, they don’t identify problems . . . [so] you’re kind of stuck in that area as far as making a diagnosis. You can still identify heavy alcohol use, those kinds of things.” *Id.*

Regarding the Individual's PEth test and EtG test results, the DOE Psychologist explained that as a psychologist, the tests were not his area of specialty, but he had consulted with another DOE consultant psychologist who has a background in chemistry and who has more experience using these tests.<sup>2</sup> *Id.* at 78–79. The Individual's EtG and PEth test results were interpreted by the consultant psychologist who has a Ph.D. and “who has specialized training and experience in these lab results.” Ex. 9 at 5. The DOE Psychologist testified that he and the consultant psychologist reviewed the Individual's test results together and the consultant psychologist assisted him in providing an interpretation of the test results and resources for test interpretation. Tr. at 67, 78–79. Further, the DOE Psychologist indicated his partial reliance on the Substance Abuse and Mental Health Services Administration (SAMHSA) which provides some guidelines regarding what the EtG test values mean.<sup>3</sup> Tr. at 66; Ex. 9 at 9–10. He stated that a test result of 1,000 nanograms per milliliter (ng/mL) means “heavy drinking on the day before or two days before or some light drinking on the same day.” *Id.* at 66. He stated that the Individual's EtG result was over 4,000 ng/mL. *Id.*

The DOE Psychologist testified that the Individual's PEth result was 170 ng/mL and stated that this result reflects excessive alcohol consumption of four or more drinks a day.<sup>4</sup> *Id.* The DOE Psychologist testified that although the Individual reported at the hearing that he had consumed alcohol two days prior to his PEth test, he had not reported that drinking incident to the DOE Psychologist during the CI. *Id.* at 69. He stated that if the Individual had engaged in heavy alcohol use on two occasions before his PEth test, as he reported during the hearing, it is possible that it could produce a result of 170 ng/mL. *Id.* at 70. The DOE Psychologist opined that based on the Individual's hearing testimony regarding his alcohol use, he seems to recognize that he is at a crossroad and that he may need some help, which is a great starting point to help him move forward. *Id.* at 71. He testified that his recommendations for the Individual remain the same as recommended in his Report. *Id.* at 76–77. He opined that he has not changed his conclusions in his Report regarding the Individual's prognosis and the insufficient evidence of reformation or rehabilitation. *Id.* at 63, 73.

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<sup>2</sup> The LSO submitted a curriculum vitae (CV) for the consultant psychologist which reflects that his undergraduate B.A. degree was in Psychology with a Minor in Chemistry, Sociology, and Anthropology, and he was a prior Chemistry Major at another university before obtaining his B.A. degree. Ex. 12 at 1. The CV also stated that the consultant psychologist has a Ph.D. in Clinical Psychology and has provided DOE consultant psychological evaluations regarding security clearances. *Id.* at 1, 8.

<sup>3</sup> The laboratory report of the Individual's EtG test result also contains a citation reference to SAMSHA. Ex. 9 at 9–10.

<sup>4</sup> The DOE Psychologist testified that for purposes of PEth interpretation, he cited an article authored by medical professionals who also perform DOE consultative examinations. Tr. at 68. The article cited in the DOE Psychologist's Report is “Ulwell, W & Smith, K (2018). *The PEth Blood Test in the Security Environment: What it is; Why it is Important; and Interpretative Guidelines*. J of Forensic Sciences, doi 10.1111/1556-4019.13894. Available online at [onlinelibrary.wiley.com](http://onlinelibrary.wiley.com).” Ex. 9 at 8.

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## 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; and
- (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 has a history of three DUI offenses and an additional alcohol-related incident, the DOE Psychologist opined that the Individual consumes alcohol to excess which likely impairs his judgment and reliability, and the Individual admitted he is still consuming alcohol as recently as the week prior to the hearing, which is against treatment recommendations. The Individual also indicated that he consumed alcohol to excess in the month prior to the hearing. Moreover, the history of his DUI arrests reflect that he has avoided alcohol-related offenses for years at a time only to later reoffend. For these reasons, I cannot find that so much time has passed, that his behavior was infrequent, or that it occurred under unusual circumstances such that the concerning alcohol consumption and related behavior is unlikely to recur. Thus, I find that the first mitigating condition is inapplicable. *Id.* at ¶ 23(a).

Although the Individual indicated that he may have an alcohol problem, he simultaneously stated that he does not see it as having a problem because he does not consume alcohol every day. *Id.* at 44. While he seems to recognize that he may need some help, he has not taken any actions to overcome his problem except trying to stay home more often. However, he was still consuming alcohol as recently as a few days before the hearing, thereby failing to demonstrate a pattern of abstinence, and he has not started any of the DOE Psychologist's treatment recommendations.



Accordingly, the second mitigating condition is inapplicable. *Id.* at ¶ 23(b). The third mitigating condition is inapplicable because the Individual is not currently enrolled in alcohol-related treatment, and although he previously completed an AA program after his second DUI conviction in 1994 and abstained from alcohol several years, he has since relapsed. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual has not entered a recommended treatment program, nor has he demonstrated abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(d).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline G are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

### **B. Guideline E**

Conditions that could mitigate security concerns under Guideline E include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and,
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

(h) Adjudicative Guidelines at ¶ 17.

The Individual's December 2022 arrest for DUI was discovered via the LSO's Continuous Evaluation Program, and the Individual was confronted with this information before he admitted to the arrest. While he asserted that he thought he did not have to report the DUI until he was convicted of the charges, I do not find this explanation to be credible. As stated in his QNSP, the Individual previously held a security clearance in his past employment, and at the hearing, he admitted that he has attended the annual security refresher briefing which indicates that he has knowledge and awareness of his security reporting requirements. Moreover, he demonstrated his awareness of the requirements to report incidents that may present a security concern because he reported his security badge theft that had occurred during an incident where he consumed significant amounts of alcohol.

Regarding the discrepancy between the Individual's reported alcohol consumption in the CI and his EtG and PEth test results,<sup>5</sup> the Individual acknowledged that he noticed the discrepancy in both the DOE Psychologist's Report and in the SSC. However, despite his knowledge of the discrepancy, he made no efforts to correct the omission when he was confronted with the facts until his testimony at the hearing. The Individual acknowledged in his testimony that he failed to disclose to the DOE Psychologist that he consumed significant amounts of alcohol three days prior to the CI. Although he indicated that he may have misunderstood the DOE Psychologist's question about his alcohol use because he was not wearing his hearing aids, the Individual provided no medical evidence of any hearing impairment, nor did he inform the DOE Psychologist during the CI that he has any hearing impairment or wears hearing aids. I find that the first mitigating condition is inapplicable because the Individual made no good-faith efforts to correct his omissions regarding his December 2022 DUI or the discrepancy of his reported alcohol use during the CI. *Id.* at ¶ 17(a).

The second mitigating condition is inapplicable because the Individual did not assert that he relied on the advice of another person when he failed to disclose his 2022 DUI arrest as required by DOE, or when he failed to correct his omission regarding his alcohol consumption before the CI. *Id.* at ¶ 17 (b).

The Individual's omissions occurred relatively recently because his failure to report his December 2022 DUI was seven months prior to the hearing and his failure to disclose to the DOE Psychologist that he consumed alcohol three days before the CI occurred eight months before the hearing. Further, his failure to correct his omissions continued up until the day of the hearing. Moreover, he continues to consume excess alcohol, has not sought alcohol treatment, and has a repeated history of DUIs. For those reasons, I cannot find that so much time has passed, or the behavior is so infrequent, or that it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the Individual's reliability,

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<sup>5</sup> Although the EtG and PEth results were interpreted by a psychologist, and as stated by the DOE Psychologist, test interpretation is typically outside a psychologist's expertise, in this case the interpreting consultant had some background in Chemistry, which bolsters his qualifications. In any event, notwithstanding the EtG and PEth test results, there is sufficient evidence, including the Individual's own hearing testimony, to find that the Individual failed to provide candid and truthful answers during the adjudicative process.

trustworthiness, or good judgment. Thus, the third mitigating condition is inapplicable. *Id.* at ¶ 17(c).

While the Individual acknowledged his failure to report his December 2022 DUI arrest, I find his reason for his failure to report his arrest was not credible as explained above. Moreover, although the Individual acknowledged at the hearing that he did not inform the DOE Psychologist that he drank alcohol three days prior to the CI, he has not sought counseling regarding his alcohol use. As both of his omissions involve his problematic alcohol use, and the Individual has not sought counseling to change the behavior, or taken other positive steps to alleviate the factors that contributed to his untrustworthy behavior, I find the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d).

The fifth mitigating condition is inapplicable because the LSO did not allege nor is there information in the SSC indicating that the Individual had engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). Regarding the sixth mitigating condition, the police report in the ROI and the Individual's admissions in his LOI response and hearing testimony regarding his failure to report his December 2022 DUI, reflect that the LSO's allegations did not rely on unsubstantiated information or sources of questionable reliability. Moreover, for the reasons explained above, I find there is sufficient evidence to support the SSC allegations regarding the Individual's failure to disclose his alcohol use during the CI and the discrepant results from his PEth and EtG results. Therefore, I find that the LSO's allegations were not unsubstantiated or from a source of questionable reliability, and for that reason the sixth mitigating condition is inapplicable. *Id.* at ¶ 17(f). The seventh mitigating condition is inapplicable because the Guideline E concerns do not revolve around association with persons involved in criminal activities. *Id.* at ¶ 17(g).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline E are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns raised by the LSO under Guideline E.

### **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.

Adjudicative Guidelines at ¶ 32.

All of the Individual's criminal offenses are alcohol-related incidents except the citation in 2002. Furthermore, the Individual's most recent DUI arrest occurred only seven months prior to the hearing, and the Individual continues to consume alcohol and has not sought any treatment to address his problematic alcohol use. Moreover, although the 2002 hit and run is the only law enforcement incident that did not involve the Individual's use of alcohol, it is the second incident of hit and run that the Individual has been involved in, which coupled with the Individual's other criminal offenses, reflects a pattern of failing to comply with laws, rules, and regulations. For these reasons, I cannot find that so much time has passed, or that that the criminal activity occurred under unusual circumstances such that it is unlikely to recur. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because the Individual did not assert that he was pressured or coerced into committing any of the offenses cited by the LSO. *Id.* at ¶ 32(b). Regarding the third mitigating condition, the Individual denied the 1995 arrest for felony hit and run and indicated that the arrestee might be another person who has the same name as the Individual, however, he presented no written information to support his assertions. Moreover, the name and birthdate on the police report match the Individual's birthdate that he reported in his QNSP. On balance, I find that the record contains reliable evidence to support that the Individual committed the offense. As for the Individual's December 2022 arrest, the Individual admitted that he was arrested for DUI but denied the allegation that he resisted the arrest. Again, aside from his testimony, he provided no written evidence to refute the charge. Accordingly, I find the third mitigating condition inapplicable. *Id.* at ¶ 32(c).

The Individual has established a pattern of committing alcohol-related offenses even after the passage of several years without committing an offense, as evidenced by the period of time between his second DUI in 1994, and his December 2022 DUI. The total of seven instances of unlawful conduct, including his 2002 citation for non-alcohol related hit and run and property damage, also shows that he has a significant history of unlawful conduct. Moreover, the Individual has not presented evidence of successful rehabilitation such as a good employment record, constructive community involvement, compliance with the terms of probation, or job training or higher education. Accordingly, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 32(d). Having concluded that none of the mitigating conditions under Guideline J are applicable in this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

## **VI. Conclusion**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E, G, and J of the Adjudicative Guidelines. After considering all of 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. 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.

Brenda B. Balzon  
Administrative Judge  
Office of Hearings and Appeals