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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: June 15, 2023)	Case No.: PSH-23-0098
)	
_____)	

Issued: August 31, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX, Junior (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."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. Background

The Individual is currently employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in August 2020, in which he disclosed that in November 2017, he had been arrested and charged with Minor in Possession of Alcohol, a charge that was ultimately dismissed. Exhibit (Ex.) 15 at 30–31. The Individual underwent an Enhanced Subject Interview (ESI) conducted by an investigator in August 2020, during which he was asked about his criminal history. Ex. 16 at 85. It was uncovered that the correct date of the aforementioned criminal incident was March 2018. *Id.*

In November 2021, the Individual was arrested and charged with Aggravated Driving While Intoxicated (DWI) and Reckless Driving. Ex. 1 at 3. As a result of the arrest, in January 2022, the local security office (LSO) requested that the Individual complete a Letter of Interrogatory (January 2022 LOI). Ex. 11. The Individual also underwent a psychological evaluation by a DOE-consultant psychiatrist (DOE Psychiatrist) in March 2022. Ex. 13 at 6. The DOE Psychiatrist

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.

determined that the Individual did not meet the criteria for a diagnosis of Alcohol Use Disorder. *Id.*

In August 2022, the Individual was arrested and charged with Aggravated Assault (Deadly Weapon), Aggravated Battery Against a Household Member (Deadly Weapon), False Imprisonment, and Negligent Use of a Deadly Weapon (Intoxication). Ex. 1 at 2. As a result of the arrest, LSO requested that the Individual complete another Letter of Interrogatory (November 2022 LOI). Ex. 11. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in December 2022. Ex. 12. The DOE Psychologist relied on the information that she obtained in the clinical interview with the Individual, as well as her review of the Individual's Personnel Security File and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). Ex. 13 at 3. In January 2023, the DOE Psychologist issued a report (the Report) containing her assessments and conclusions, which included the conclusion that the Individual meets the criteria for Unspecified Alcohol-Related Disorder (UARD), "which has impaired his judgment." *Id.* at 10.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct), G (Alcohol Consumption), and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf, presented the testimony of his father and current supervisor, and submitted five exhibits, marked as Exhibits A through E. The DOE Counsel submitted sixteen exhibits marked as Exhibits 1 through 16 and presented the DOE Psychologist as a witness.

II. Notification Letter

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance.

A. Guideline E

Under Guideline E, "[c]onduct involving questionable judgement, 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 concern is the "[d]eliberate omission, concealment, or falsification of relevant facts from any . . . personal history statement, or similar form used to conduct investigations . . .

determine national security edibility or trustworthiness, or award fiduciary responsibilities[.]” *Id.* at ¶ 16(a).

Under Guideline E, the LSO alleged that the Individual’s account of his arrest on August 15, 2022, was not consistent with the account provided by local law enforcement. Ex. 1 at 1–2. Specifically, the report from law enforcement stated that the Individual had fired his rifle the night of the incident when he indicated in the LOI that he had not, that the Individual had engaged in physical violence against his then-girlfriend when the Individual reported in the LOI that she had fallen during the argument, and that the Individual appeared to be intoxicated at the time of his arrest even though he stated in his LOI that he was not. The LSO’s invocation of Guideline E is justified.

B. Guideline G

Under Guideline G, “[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.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as . . . fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]” Adjudicative Guidelines at ¶ 22(a) and (d).

Regarding Guideline G, the LSO alleged that the DOE Psychologist diagnosed the Individual with UARD, “without adequate evidence of rehabilitation or reformation,” and that the Individual “habitually binge consumes alcohol to the point of impaired judgment.” Ex. 1 at 2. The LSO further alleged that the Individual had been arrested and charged three times since 2018 for crimes related to his alcohol use. *Id.* Specifically, the LSO alleged that that in 2018, the Individual was arrested and charged with Minor Possession of Alcoholic Beverages and Contributing to Delinquency of a Minor, that in 2021, he was arrested and charged with Aggravated DWI and Reckless Driving, and that in 2022, he was arrested and charged with Aggravated Assault (Deadly Weapon), Aggravated Battery Against a Household Member (Deadly Weapon), False Imprisonment, and Negligent Use of a Deadly Weapon (Intoxication). *Id.* The LSO’s invocation of Guideline G is justified.

C. Guideline J

Guideline J states that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” and that, “[b]y its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under Guideline J include “[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b).

Regarding the Guideline J concerns, the LSO alleged the aforementioned arrests and criminal charges. *Id.* at 2–3. The LSO’s invocation of Guideline J 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 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. *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

In March 2018, the Individual was arrested and charged with Minor in Possession of Alcoholic Beverages and Contributing to the Delinquency of a Minor. Ex. 1 at 2. Regarding this incident, the Individual told the investigator and testified that when he was 19 years old, he was a passenger in a car in which the driver was intoxicated. Ex. 16 at 85; Tr. at 45. Law enforcement personnel stopped the car, the Individual was arrested and taken to a detention center, and the charges were ultimately dismissed after the Individual “attended and completed [an] alcohol education seminar[.]” Ex. 16 at 85–86; Tr. at 45–46. The Individual testified that he had consumed approximately “four or five beers” and “a few shots.” Tr. at 45–46. He indicated that at that point in his life, the 2018 incident did not have an “impact on how [he] viewed alcohol[.]” *Id.* at 46.

In November 2021, the Individual was arrested and charged with Aggravated DWI and Reckless Driving. Ex. 1 at 2. The Individual stated in his January 2022 LOI that on the day of this incident, he was driving to a fast-food restaurant when he was stopped by law enforcement personnel. Ex. 11 at 1; Tr. at 48. At the hearing, the Individual indicated that he was speeding when he was pulled over. Tr. at 47. Field sobriety and breath alcohol tests were conducted, and the breath alcohol tests resulted in values of .16 and .14. Ex. 11 at 1; Tr. at 47. The Individual was arrested. Ex. 11 at 1; Tr. at 47. In his January LOI, the Individual stated that on this occasion, he had consumed eight to nine beers, along with one hard seltzer over the span of approximately three hours and forty-five minutes. Ex. 11 at 1; Ex. 13 at 5. At the hearing, the Individual stated that he had consumed six to seven beers and one alcoholic seltzer. Tr. at 47. The charges were ultimately dismissed. Ex. 11 at 2, 10; Ex. 13 at 5; Tr. at 48–49. The Individual testified that following the November 2021 DWI, he was not permitted to return to work for approximately “a month-and-a-half.” Tr. at 49. He also

testified that after this incident, he remained abstinent from alcohol for approximately eight to nine months, and only drank about “once or twice a week” after he started consuming alcohol again. *Id.* at 50–51, 94. Although the Individual could not articulate a specific reason why he started drinking again, he did testify that he “started drinking because [his former girlfriend] was always drinking.” *Id.* at 51, 93–94. Following this incident, the Individual attended and completed an alcohol awareness and education class that was provided by his employer’s Employee Assistance Program (EAP), which he completed in January 2022. Ex. 11 at 12; Ex. 13 at 5; Ex. D. The Individual testified that the alcohol awareness and education class was required because he was placed in the Fitness for Duty (FFD) program. Tr. at 49.

In March 2022, the Individual was evaluated by the DOE Psychiatrist. Ex. 13 at 5. The DOE Psychiatrist concluded that the Individual did not meet the criteria of Alcohol Use Disorder and he did not see any evidence that the Individual was a binge or habitual consumer of alcohol. *Id.* The DOE Psychiatrist stated that the DWI “appears to have been a one-time incident” and that the Individual had “learned from this episode and made changes in his life including being abstinent from alcohol since the arrest as evidence[sic] by both history and testing.” *Id.* at 5–6.

As stated above, in August 2022, the Individual was arrested and charged with Aggravated Assault (Deadly Weapon), Aggravated Battery Against a Household Member (Deadly Weapon), False Imprisonment, and Negligent Use of a Deadly Weapon (Intoxication). Ex. 1 at 2; Tr. at 91. He ultimately pled no contest to a charge of Aggravated Assault (Deadly Weapon) and Aggravated Battery (Misdemeanor).² Ex. B; Tr. at 69–70. The incident was reported to the LSO in the days following his arrest by one of his relatives, as the Individual was still in custody. Ex. 8 at 8. Following the report, the Individual was placed on his employer’s FFD program by Occupational Medicine (OM). Ex. 7 at 2–3.

The law enforcement incident report of the event indicates that law enforcement was dispatched to the residence, and responding officers were advised that the Individual might try to shoot them upon their arrival. Ex. 12 at 7. The incident report states that when law enforcement arrived, both the Individual and his then-girlfriend were outside, and the young woman was “yelling for help[.]” *Id.* The officer who wrote the report indicated that when he detained the Individual, he could smell “a strong smell of alcohol coming from his person[.]” and noted the Individual’s “bloodshot watery eyes consistent with alcohol intoxication.” *Id.* He also took notice of “a large number of empty beer bottles throughout the residence.” Ex. 12 at 7; Tr. at 94. In his testimony, the Individual indicated that the couple had not cleaned up the home, so there were bottles “left over” and it “was just kind of just a mess.” Tr. at 94. Per the incident report, the Individual’s former girlfriend told the deputy that after the couple argued in the car on the way home from the Individual’s parents’ house, and after they ate dinner, she proceeded to go to bed. Ex. 12 at 7. She then told law enforcement that she was awoken by the Individual “mumbling and loading a firearm[.]” after

² Per the Judgement and Order Deferring Sentence, the Individual was found guilty of Aggravated Assault (Deadly Weapon) and Aggravated Battery in May 2023, resulting in a deferred sentence, which among other things, requires that the Individual complete alcohol/substance abuse treatment and an anger/conflict management program, and not possess or consume any alcohol. Ex. B. He is also subject to random urine testing. *Id.* at 3; Tr. at 71–72. The Individual will remain under supervised probation for two years and six months. Ex. B at 2; Tr. at 70–71.

which he began hitting her with an object she could not identify.³ *Id.* The incident report indicates that “she positioned herself” near the closet, at which point, the Individual discharged his firearm and she proceeded to lock herself in the bathroom.⁴ *Id.* The incident report goes on to state that the law enforcement officer observed “swelling and discoloration around” one of the victim’s eyes and the side of her neck, dried blood on her face, and injuries to her forearms, and that he located the rifle, “one spent casing[,]” and a hole “no more than one foot from where [the Individual’s then-girlfriend] described herself as being when the rifle was fired.”⁵ *Id.* Law enforcement noted multiple firearms and related paraphernalia around the home and on the Individual. *Id.*; Tr. at 68. In his testimony, the Individual explained that he had firearm-related paraphernalia on his person because he had been “shooting that day[.]” and was wearing the same pants. Ex. 12 at 7.

Regarding the incident, the Individual indicated in his November 2022 LOI that he got into an argument with his former girlfriend on their way home. Ex. 10 at 1; Tr. at 52. When the couple arrived at their home, his former girlfriend made dinner, they “both had some drinks[,]” and they began arguing again late in the evening. Ex. 10 at 1; Tr. at 53. The Individual went on to state that his former girlfriend “was angry and came at [him,]” which resulted in her “tripp[ing] and f[alling], hitting her head on the [doorjamb].”⁶ Ex. 10 at 1–2; Tr. at 54–55, 60, 63. The Individual then went on to state that as his former girlfriend fell, “she knocked over a gun that was propped up by a door and the gun discharged when it hit the floor.”⁷ Ex. 10 at 1. In the LOI, the Individual indicated that the bullet from the discharged weapon hit the floor, and his former girlfriend went to the bathroom to call her mother. Ex. 10 at 1; Tr. at 55–57. He stated in the LOI that law enforcement personnel subsequently arrived and accused the Individual of striking his former girlfriend. Ex. 10 at 1. At the hearing, the Individual testified that law enforcement personnel had arrived with their sirens off, as he believes they were warned that he would attempt to “kill the police[,]” so he unloaded his weapons and placed them on the bed. Tr. at 56, 64. He went on to state in the LOI that his former girlfriend told law enforcement that he had fired the rifle, which resulted in the firearm related charge. Ex. 10 at 1. He could not explain in the LOI why he was charged with false imprisonment and stated that he initially entered a plea of not guilty because he “did not commit the crimes [he] was charged with.” *Id.* at 1, 3. The Individual also indicated that on that occasion, he consumed one beer and a mixed drink over the course of two hours. *Id.* at 2. At the hearing, the

³ The DOE Psychologist’s report indicates that the Individual’s former girlfriend stated in her Petition for Order of Protection from Domestic Abuse that the Individual began punching her. Ex. 13 at 3.

⁴ The Event Notes in the incident report indicate that the Individual’s former girlfriend had taken her own handgun into the bathroom with her. Ex. 12 at 18.

⁵ At the hearing, when he was asked how his former girlfriend sustained the injuries to her left eye, the Individual stated that he believes it was caused when she fell into the doorjamb, but also surmised that the injury could have been sustained the day before, when she was in the mountains. Tr. at 65–66. The Individual also thought that the bruising and abrasions to her forearms could have been caused by her excursion into the mountains. *Id.* at 67–68. He could not offer an explanation for the injury to her neck. *Id.* at 66. He also indicated that he believes the bleeding officers observed was the result of her hitting the doorjamb. *Id.* at 67.

⁶ At the hearing, the Individual stated that his former girlfriend “may or may have not tripped over [his] foot[.]” Tr. at 55. In later testimony, he stated that his former girlfriend tripped over a rug. *Id.* at 60. He indicated that after she fell, his former girlfriend began screaming that the Individual had struck her, so he walked outside. *Id.* at 55.

⁷ At the hearing, the Individual testified he “[could not] tell [us] if [the firearm] discharged or [did not] discharge[.]” and that he “really [does not] know.” Tr. at 55–56.

Individual testified that he had consumed approximately four or five beers and two mixed beverages on the night of the incident.⁸ Tr. at 51–52.

He stated in the November 2022 LOI that he was abstinent from alcohol because “[d]rinking is not allowed as a condition of [his] release[.]” Ex. 10 at 4. He indicated that the last time he consumed alcohol was the night of the incident, and that he was last intoxicated in November 2021. *Id.* He also stated in the LOI that his alcohol “consumption ha[d] decreased in the last three years.” *Id.* at 4–5. He insisted that the 2022 incident was not the result of alcohol consumption, but rather, he “was breaking up with his then-girlfriend and she was angry about [him] wanting to breakup [*sic*].” *Id.* at 5–6. He indicated in the LOI that he does not feel he has a problem with alcohol. *Id.* at 5.

In December of 2022, the Individual underwent a psychological evaluation performed by the DOE Psychologist. Ex. 13. During the clinical interview, the Individual described the events leading up to his arrest in August of 2022. *Id.* at 2. In addition to recounting the argument that he had with his former girlfriend, he also told the DOE Psychologist that he consumed only one beer and one mixed drink, while his former girlfriend consumed “half a bottle of wine” when they got home *Id.* He then said that his former girlfriend “got aggressive with [him], came at [him], and slipped on the rug and fell.” *Id.* The Individual told the Psychologist that when his former girlfriend fell, she hit a rifle that was propped against a wall, and the rifle discharged. *Id.* at 3. He clarified that he did not have a gun safe in the home, and when the DOE Psychologist asked him whether the safety was on, the Individual indicated that the gun did not have a safety.⁹ Ex. 13 at 3; Tr. at 58–59, 61. He stated to the DOE Psychologist that his former girlfriend then ran into the bathroom, where the Individual believed that she called her mother. Ex. 13 at 3. He testified and indicated to the DOE Psychologist that his former girlfriend came out of the bathroom with a gun pointed at him. Ex. 13 at 3; Tr. at 57. The Individual also told the DOE Psychologist and testified that his former girlfriend was asked by law enforcement to put her gun down when she left the home to meet them. Ex. 13 at 3; Tr. at 58.

The DOE Psychologist noted in her report and in her testimony that the Individual’s account of what occurred on the night of the incident varied “in some important ways” from the account that his former girlfriend provided in the Petition for Order of Protection from Domestic Abuse¹⁰ she filed in August 2022 and the incident report that law enforcement compiled. Ex. 13 at 3; Tr. at 100. When asked during the psychological evaluation whether he believed “he made any mistakes during [the] incident[.]” the Individual told the DOE Psychologist that “he could have waited [un]til the morning (to end the relationship) because [she was] intoxicated.” Ex. 13 at 4.

⁸ After the Individual was asked to explain why he indicated in his LOI that he consumed “one beer and one mixed drink over two hours” on the night of the incident, he testified that he did not recall how many alcoholic beverages he consumed on the night of the incident. Tr. at 87.

⁹ As noted by the DOE Psychologist, the incident report indicated that the safety on the firearm was not on. Ex. 13 at 3. Further, at the hearing, the Individual testified that he was storing his firearms, unloaded, in the closet, which did not have a door and was located next to the door his former girlfriend allegedly struck. Tr. at 59–62.

¹⁰ The Individual testified that he agreed to have the order entered against him for five years, as he no longer wants any contact with his former girlfriend. Tr. at 89.

Regarding any future alcohol consumption, the Individual told the DOE Psychologist that he intends to remain abstinent from alcohol. *Id.* at 6. A Phosphatidylethanol (PEth) blood test was performed in conjunction with the DOE Psychologist's evaluation. *Id.* at 9. A PEth test "detects any significant alcohol use of the past three to four weeks." *Id.* The DOE Psychologist opined that the Individual's PEth test results indicated that the Individual had "not been drinking on a regular, heavy basis within a few weeks of the test, and has not had binge drinking episodes or moderate drinking within about one week of the test."¹¹ *Id.* The DOE Psychologist's Report also noted that the Individual began seeking one-on-one counseling through his employer's EAP in September 2022, as it was recommended by an OM physician. *Id.* at 6–7. At the hearing, the Individual testified that his counselor "wants to focus on anger management type sessions." Tr. at 73. He indicated that he tries to see his counselor every three to four weeks.¹² *Id.* at 74.

The DOE Psychologist's Report ultimately concluded that the Individual meets the criteria for a diagnosis of Unspecified Alcohol-Related Disorder, which has impaired his judgment because his "decisions vis-à-vis alcohol have caused him significant distress and interfered with his occupational functioning." Ex. 13 at 10. She recommended that the Individual complete a twelve-week "second-tier intervention[.]" to maintain his sobriety, as the Individual had already completed an alcohol education and awareness class, and submit to monthly PEth tests for the period he is receiving second-tier intervention to provide proof of continued abstinence while taking that course. *Id.*; Tr. at 101–02.

In April 2023, the Individual began attending a group to help him maintain his sobriety. Ex. D. As of early August 2023, the Individual had attended thirteen group sessions and received a certificate of completion. *Id.*; Ex. A; Tr. at 78. He testified that through that class, he learned that we all make mistakes and he learned to "never give up on what [he is] working towards." Tr. at 78. He also learned how to identify his triggers, and now, he goes to the gym more frequently to occupy his time without the use of alcohol. *Id.* at 79. The counselor who conducts the group sessions authored an August 2023 letter indicating that the Individual "demonstrates openness, willingness, interacts with group participants, listens, [and] shares[.]" Ex. D. She also stated in the letter that the Individual has recognized that "alcohol is not worth" the negative outcomes he has endured, and that he has stated his intention to remain abstinent from alcohol. *Id.* At the hearing, the Individual testified that he had been abstinent from alcohol exactly one year, he plans to "stay away from" alcohol, and his support system consists of his parents. Tr. at 80–83. He does not keep alcohol in his home. *Id.* at 95.

In her testimony, the DOE Psychologist noted that the Individual completed the aforementioned recommendations, stated that she does not believe that the Individual has an alcohol dependency, and indicated that the Individual has shown adequate evidence of rehabilitation or reformation. *Id.*

¹¹ The Individual also voluntarily submitted to five PEth tests from March 2023 to July 2023, the results of which indicated that alcohol was not detected. Ex. C; Tr. at 80–81.

¹² The Individual's counselor authored an unsigned August 2023 letter, indicating that the Individual had attended twelve sessions, and stated that his therapy objectives included "[i]dentify[ing] triggers for potential relationship conflict, skills for improving communication, [and] identify[ing] personal responsibility in past relationship difficulties." Ex. E; Tr. at 74–75. The counselor also stated that the Individual has a "cooperative attitude and has participated fully in all sessions completed." Ex. E.

at 103–04. The DOE Psychologist also indicated that the Individual has a good prognosis. *Id.* at 104.

The Individual’s current supervisor, who has known the Individual for approximately one-and-a-half years and sees him on a daily basis, testified that he has not interacted with the Individual in a social setting. *Id.* at 19–20. He also indicated that the Individual “works hard” and follows applicable procedures on the job and “reports safety concerns as needed.” *Id.* at 20. Although he did not know the specifics involving the alcohol classes the Individual attends, the Individual’s supervisor did confirm that the Individual would leave work early to attend the classes. *Id.* at 21. He also testified that the Individual “has good judgment[,]” is trustworthy, and is honest. *Id.* at 24.

The Individual’s father testified that prior to the August 2022 incident, he had not seen his son “really drink any alcohol front of [him] during that time[.]” and that alcohol is rarely, if ever, consumed at family events and gatherings. *Id.* at 31–32. He testified that he was in communication with the Individual and his former girlfriend as the events of August 2022 were unfolding, and that the Individual’s former girlfriend told him that the Individual “was being rude to her and calling [her] awful names[.]” *Id.* at 32–33. The Individual’s father encouraged the Individual and his former girlfriend to work through the matter, and testified that the Individual’s girlfriend would call him with “the same complaints[.]” on a bi-weekly basis. *Id.* at 33–34. He stated that when his son called him on the night of the incident, he told his son that they need to “stop arguing.” *Id.* at 35. He testified that since the dissolution of the relationship, he has noticed that his son is “a lot less on edge[.]” and is not as “agitated.” *Id.* at 38. The Individual’s father stated that the Individual has not consumed alcohol since the August 2022 incident “for a fact[.]” that the Individual spends time with people who are a “good influence,” and that the Individual intends to remain abstinent from alcohol. *Id.* at 38–39.

V. Analysis

A. 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

Id. at ¶ 17.

The discrepancies between what the statements the Individual made throughout the record regarding the August 2022 incident and the law enforcement incident report are deeply concerning. For instance, the Individual told the DOE Psychologist that on the night of the incident, his then-girlfriend pointed a gun at him when she came out of the bathroom and left the home with a gun in her hands when law enforcement responded. The November 2022 LOI never mentions that his girlfriend held a gun, let alone pointed one at him or walked outside with one. His accounts of how much he drank on the night of the incident also vary substantially from the LOI to his testimony. Further, the incident report indicates that the responding officers observed physical injuries to the Individual's girlfriend, which included "discoloration and swelling to the right side of her neck[.]" as well as "bruising to both of her forearms[.]" Ex. 12 at 20–21. On its face, these injuries seem inconsistent with the Individual's account that his former girlfriend fell and struck the doorjamb. While I am willing to accept that the incident may not have occurred exactly as alleged by the Individual's former girlfriend per the law enforcement incident report, I do believe that the varying accounts of what occurred and the accounts of violence on the night of the incident leave me without sufficient confidence to conclude that the Individual was being entirely forthcoming regarding what actually transpired on that night.

I have no evidence before me that the Individual attempted to make any corrections to the omissions, concealments, or falsifications or that such omissions, concealments, or falsifications were the result of any advice he received from an attorney or representative. Thus, the Individual has not mitigated the stated concerns pursuant to factors (a) and (b). As the Individual's behavior pertained to a recent event that was of consequence to his access authorization, based on the information I have before me, I cannot conclude that his less-than-forthcoming behavior was minor, occurred long ago, or was infrequent. I also cannot conclude that it happened under such unique circumstances that it does not cast doubt on his reliability, trustworthiness, or good judgment, as the complete disclosure of information pertinent to security concerns are an ongoing

obligation for any individual with an access authorization. Therefore, the Individual has not mitigated the stated concerns pursuant to factor (c).

While the Individual has obtained and continues to attend one-on-one counseling, there is no indication before me that these counseling sessions address any issues pertaining to his lack of candor. Rather, based on the information I have before me, I understand that the counseling is meant to address matters pertaining to his intimate relationships. Additionally, the Individual has not acknowledged any lack of candor on his part, and accordingly, the Individual has not mitigated the concerns pursuant to factor (d).

As the LSO did not allege that the Individual is vulnerable to exploitation, manipulation, or duress or that the Individual was associated with persons involved in criminal activities, the factors at (e) and (g) are not applicable. Additionally, there is no indication in the record that the information came from a source of questionable reliability. The mitigating factor at (f) is also not applicable.

In sum, the Individual has not successfully mitigated the security concerns raised by the LSO under Guideline E.

B. 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
- (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 on the information before me, it is clear that the Individual was proactive about changing his relationship with alcohol. This process began after the DUI arrest, when the Individual sought and completed an alcohol awareness class. Although I have some concerns over the fact that the Individual continued consuming alcohol prior to the August 2022 incident, he did comply with the

DOE Psychologist's recommendations, as they were provided in the January 2023 Report. He submitted to five PEth tests, all of which indicated that no alcohol was detected, and he enrolled in and attends a group program to help him maintain his sobriety. He has an established support system, has stated that he intends to remain abstinent from alcohol, has recognized that his alcohol consumption was maladaptive, and at the time of the hearing, had been abstinent from alcohol for twelve consecutive months. Lastly, and importantly, the DOE Psychologist determined that the Individual had shown adequate evidence of rehabilitation and reformation.

In light of the positive prognosis from the DOE Psychologist, the Individual's abstinence of one year, as evidenced by the test results and witness testimony, his participation in treatment, and the support system he has established, I feel confident he is unlikely to engage in problematic alcohol consumption in the future. For these reasons, I find that the Individual has satisfied the second and third mitigating conditions under Guideline G, and has therefore resolved the security concerns related to his maladaptive alcohol use. *Id.* at ¶ 23(b).

C. Guideline J

The Adjudicative Guidelines provide that 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.

Although the Individual's criminal conduct was alcohol-related, and as stated above, I believe the Individual has mitigated the alcohol-related concerns, I cannot conclude that the Individual has mitigated the Guideline J concerns. As an initial matter, I find it very concerning that the charges and allegations have only escalated in severity. The Individual was charged criminally in 2021 with an alcohol-related offense, and following that incident, the DOE Psychologist concluded that the matter was unique in nature. In 2022, the Individual was charged, yet again, with an alcohol-related incident. This time, the allegations involved egregious bodily harm to another person and the alleged use of a firearm. Further, these criminal acts also took place under circumstances that are not considered unusual. A drive to a fast-food restaurant and a disagreement with a romantic partner are not unusual. Therefore, based on the foregoing and the fact that the most recent and

grievous incident had transpired just one year prior to the hearing, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (a). Further, while I am heartened by the testimony provided by the Individual's supervisor regarding his good job performance, the Individual has not yet completed the terms of his probation, I have no evidence of higher education or additional job training, and not a sufficient amount of time has passed when considering the severity of the crimes. Therefore, I cannot conclude that the Individual has mitigated the stated concerns pursuant to factor (d).

I have no evidence before me that indicates the Individual was pressured or coerced into committing the criminal acts, or that the evidence supporting the allegation that he committed the criminal acts are unreliable. Therefore, the mitigating factors at (b) and (c) are not applicable to this case.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E, G, and J 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 although the Individual has brought forth sufficient evidence to resolve the stated security concerns under Guideline G, he has not brought forth sufficient evidence to resolve the Guideline E and J concerns set forth in the SSC. Accordingly, the Individual has not 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 not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals