United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
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Filing Date: September 28, 2023	)	Case No.: PSH-23-0144
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Issued: December 15, 2023

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the Individual") to hold an access authorization under the United States Department of Energy's (DOE) regulations, as 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 employed by a DOE contractor in a position that requires him to hold a security clearance. In November 2022, DOE notified the Individual that, as part of its Continuous Evaluation System, it discovered that "a protection order was placed on" him in October 2022. Exhibit (Ex.) 5. The Individual subsequently completed three Letters of Interrogatory (LOI) in November 2022, revealing that, in July 2022, he was arrested for Driving While Intoxicated (DWI).[2] Ex. 6 at 1–2; Ex. 7 at 4. As a result of the DWI, the Individual was court ordered to undergo an "Alcoho[l]/Drug Evaluation" and comply with any recommended treatment. Ex. 13. He also stated in response to the LOIs that, while in custody, he told a law enforcement officer "just kill me." Ex. 6 at 1. As a result of this statement, the Individual indicated, he was transported

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

[2] The law enforcement citation indicates that the charge was Aggravated DWI – Blood Alcohol Content .18 or Higher. Ex. 9.

to a hospital for an evaluation, where he was found to not be "a danger to [himself]." *Id*. However, the Individual learned that, due to his statement, law enforcement "executed a warrant to take [his] firearms."[3] *Id*. The Individual claimed that he did not report these events to DOE at the time they occurred, as he "was under the assumption that reporting was conducted in the [Questionnaire for National Security Positions (QNSP)], which would happen in about a year." *Id*. at 2.

The Individual subsequently underwent a psychological assessment with a DOE consultant psychologist (DOE Psychologist) in April 2023. Ex. 4. As part of the evaluation, the Individual underwent a Phosphatidylethanol (PEth) test for alcohol consumption that was positive at a level of 90 ng/mL, which according to the DOE Psychologist, indicated that the Individual was "consuming much more alcohol" than he reported. *Id*. at 3–4. The DOE Psychologist ultimately determined that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment. *See id*. at 5.

Due to unresolved security concerns, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 2.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. *Id*. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted twenty numbered exhibits (Ex. 1–20) into the record and presented the testimony of the DOE Psychologist.[4] The Individual submitted twenty-two exhibits (Ex. A–V) into the record, and he presented his own testimony. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

II. Regulatory Standard

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

[3] The Individual's firearms were seized as the result of a judge issuing an "Extreme Risk Protection Order" in October 2022. Ex. 11.

[4] Exhibit 19 contains the 2018 QNSP, a 2019 Enhanced Subject Interview, two "source interviews," and a 2012 QNSP. The Individual's attorney argued that the interview portions of Exhibit 19 should not be given substantial weight "in terms of impeachment of prior testimony," but did not provide any further basis for this argument. Tr. at 10. The Individual does not specifically dispute the accuracy of any information within Exhibit 19, and as such, I have no reason to afford it less weight.

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. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The SSC specifically cites Guideline G and Guideline E of the Adjudicative Guidelines. Ex. 1. Guideline G relates to security risks arising from excessive alcohol consumption. "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.

In citing Guideline G, the LSO relied upon the DOE Psychologist's April 2023 determination that the Individual habitually or binge consumes alcohol to the point of impaired judgment. Ex. 2 at 1. It also cited the Individual's positive PEth test as well as the DOE Psychologist's conclusions that the Individual was consuming "more alcohol and more frequently" than he was reporting and was not forthcoming about his alcohol consumption. *Id.*

The SSC also cites Guideline E of the Adjudicative Guidelines. *Id.* at 3. Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct "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." *Id.*

In citing Guideline E, the LSO asserted that the Individual concealed facts relevant to a national security eligibility determination. *Id.* at ¶ 16(a), (b). Specifically, it alleged that:

1. The Individual failed to report that he received "an extreme temporary protection order" against him in October 2022;

2. The Individual failed to report the July 2022 Aggravated DWI;

3. The Individual failed to report that he was taken to a hospital for overnight observation and evaluation due to his making "suicidal statements" while in police custody;

4. The Individual failed to report that he was court ordered to undergo alcohol and substance abuse treatment following the July 2022 DWI;

5. On a 2018 QNSP, the Individual answered "no" to having received any reprimand or discipline from an employer. He subsequently "failed to discuss the issue" during an April 2019 Enhanced Subject Interview (ESI). However, "a source interview disclosed [the Individual] was written up two . . . weeks into his employment for leaving classified hard drives unattended;"[5] and

6. On a 2012 QNSP, the Individual listed that he used marijuana once in June 2006; however, the Individual subsequently provided two conflicting accounts of his marijuana use.

Ex. 2 at 2–3.

Also pursuant to Guideline E, the LSO asserted that the Individual demonstrated a pattern of dishonesty and rule violations. *Id*. at 3; Adjudicative Guidelines at ¶ 16(c), (d). It cited the July 2022 Aggravated DWI, the Individual's marijuana usage, and the Individual's admission in a December 2012 ESI that he consumed alcohol before he was of legal age. Ex. 2 at 4. It also cited that, in an August 2019 LOI, the Individual reported that he received "written counsel" as a result of failing to follow procedures regarding classified hard drives. *Id*. at 3.

IV. Findings of Fact

As stated above, after completing three LOIs in November 2022, the Individual underwent a psychological evaluation with the DOE Psychologist. Ex. 4. The Individual disclosed that he "typically drinks beer once a month and usually at home." *Id*. at 2. He stated that he and his wife go out to dinner approximately once every other month where he "may have a beer or two." *Id.* The Individual stated that, on the night of the DWI, he had "5 or 6 beers over about a three-hour period." *Id*. at 2. The DOE Psychologist noted that the Individual was likely under-reporting the amount of alcohol he consumed prior to the arrest as, based upon his calculations, five to six beers in three hours "would yield an approximate BAC of 0.07g/mL . . . which is much lower tha[n] the BAC that was recorded for him by" law enforcement. *Id*.

As part of the evaluation, the Individual underwent an Ethyl Glucoronide (EtG) test and a PEth test. *Id*. at 3. The EtG test was negative, which the DOE Psychologist noted was indicative that it was "unlikely that [the Individual] ha[d] consumed significant amounts of alcohol within the previous 96 hours." *Id*. However, the PEth test was positive at 90 ng/mL. *Id*. The DOE

[5] The SSC did not include a date for the alleged disciplinary action; however, according to the "source," the incident occurred in 2016 or 2017. Ex. 2 at 2; Ex. 19 at 59.

Psychologist noted that, given the Individual had not consumed alcohol within the three days before the test, the Individual's "PEth three to six days prior to his lab tests would have been about 135 ng/mL."[6]

In response to the question, "Does [the Individual] have an alcohol use disorder and/or does he habitually or binge consume alcohol to the point of impaired judgment, regardless of whether he is diagnosed with an alcohol use disorder?" the DOE Psychologist responded "[y]es." *Id*. at 5. He elaborated, stating based upon the results of the PEth test, the Individual:

> drinks more alcohol and more frequently than he reports, and at a level that could result in impaired judgement, stability, reliability, or trustworthiness. Since [the Individual] was not forthcoming about his alcohol use patterns, I cannot accurately diagnose him as having an alcohol use disorder, but it is my judgment that he is using alcohol in a manner that is of concern.

Id. The DOE Psychologist further opined that the Individual did not have a favorable prognosis and had not demonstrated adequate evidence of rehabilitation or reformation. *Id*. In order to show adequate evidence, the DOE Psychologist recommended that the Individual abstain from alcohol for six months and provide evidence of his abstinence in the form of PEth tests "at least . . . every two months." *Id*. He also recommended that the Individual enter an outpatient treatment program for alcohol abuse and participate in any recommended aftercare. *Id*. However, the DOE Psychologist noted that if the Individual chose not to participate in an outpatient treatment program, he could alternatively engage in "active participation in a program like" Alcoholics Anonymous (AA). *Id*. The DOE Psychologist recommended that the Individual attend a minimum of three AA meetings per week, obtain a sponsor, and document his attendance for a minimum of six months. *Id*.

V. Hearing Testimony

At the hearing, the Individual testified that, on the night of the DWI, he was eating dinner at a restaurant and "had too much to drink." Tr. at 43. However, he could not recall how much alcohol he consumed. *Id*. at 101. He stated that he "made the bad decision to get behind the wheel and drive." *Id*. The Individual testified that, when he was arrested for the DWI, he was placed in the back of a police car where he "kind of sarcastically" said, "you might as well just kill me." *Id*. at 41. He stated that the phrase "is a pretty common expression where [he's] from." *Id*. at 42. The Individual stated that he later learned that, in his state, if a person "makes that kind of statement," the police are under an obligation to seize any firearms that person may have, and therefore, an extreme temporary protection order was issued against him. *Id*. at 41–42. The Individual explained

[6] The DOE Psychologist cited a study that "showed that a PEth value of 73 [ng/mL] was associated with people . . . who self-reported drinking up to four drinks per day." Ex. 4 at 4; *see* Ulwelling, 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*, doi10.1111/1556-4019.13894, available online at: onlinelibrary.wiley.com. The DOE Psychologist cited a second study that showed a PEth of 127 ng/mL was consistent with two or more drinks per day for three weeks, and a third study that showed a PEth of 141 ng/mL was consistent with four or more drinks per day. Ex. 4 at 4; *see* Hartmann, S., Aradottir, S., Graf, M., Wiesbeck, G., Lesch, O., Ramskogler, K., Wolfersdorf, M., Alling, C., and Wurst, F.M. (2007), Phosphatidylethanol as a sensitive and specific biomarker: comparison with gamma-glutamyl transpeptidase, mean corpuscular volume, andcarbohydrate-deficient transferrin, *Addiction Biology*, *12* (1): 81-84.

that he did not make the statement as "an actual ideation of suicide or wanting to die[,]" he was just frustrated and using a "figure of speech." *Id*. at 42. Nonetheless, the Individual testified that law enforcement transported him to a hospital for overnight evaluation, after which a psychiatrist determined that he was not a danger to himself or anyone else. *Id*. at 44–45.

The Individual testified that he did not disclose the DWI to anyone in his office, and following the DWI, he did not notify "anybody" that an order of protection was issued against him. *Id*. at 46, 48. Further, he stated that he did not report that he was court ordered to undergo alcohol and substance abuse treatment or that he was held for a psychiatric evaluation. *Id*. at 53. The Individual testified that he has held a clearance for approximately a decade, but he "was under the belief that these types of things, . . . encompassing [the] DWI [and] obviously, the risk protection order was reported" on the QNSP. *Id*. at 46, 97. The Individual testified that he "wasn't aware of anybody that [he was] supposed to report these things to." [7] *Id*. at 47. When asked if he now understands the reporting requirements, the Individual stated that he was "still foggy with who exactly it would be to report it [sic]." *Id*. at 50.

Regarding the allegation in the SSC that he failed to disclose a "reprimand or discipline" by an employer on his 2018 QNSP and that a "source interview" disclosed that, around 2016 or 2017, the Individual had been "written up two weeks into his employment for leaving classified hard drives unattended," the Individual stated, "[y]es . . . that incident, that all did happen." *Id*. at 54; Ex. 19 at 59. The Individual explained that he was not properly trained on how to manage the classified hard drives, and later, his "whole team received training" on the topic. Tr. at 55–56. The Individual asserted when he went to sign the write up with his supervisor, the supervisor "admit[ted] fault especially for the lack of training." *Id*. at 57. He stated that the incident "wasn't something that stuck out in [his] mind as . . . a . . . really big, . . . huge mistake." *Id.* The Individual stated that when he completed the 2018 QNSP, it was approximately two years after the write up, and he "wasn't thinking about it when [he] was . . . filling it out." *Id*. at 55.

Turning to the discrepancies in the Individual's reports of his marijuana use, the Individual explained that, when he enlisted in the military and was completing the necessary forms, he told the recruiter that he had used marijuana.[8] *Id*. at 59–60. The Individual asserted that the recruiter said, "are you sure you want to put that on there?" *Id*. at 60. The Individual elaborated, saying:

> Which at that point, I understood what the subtext was, right? Where he wasn't coming out and saying not to put it on or put it on. But I understood what he was saying. So I did admit to at least using it once, which obviously was not the case, you know? But I thought at least admitting that I had used it once . . . was enough to suffice.

[7] The Individual acknowledged that he completes the annual trainings required by DOE in order to maintain a security clearance; however, he stated that he did not recall the training including the reporting requirements. Tr. at 136; *see* DOE Order 472.2A, Personnel Security, Attachment 5.

[8] The Individual did not provide a date for this interaction or any specificity about the forms he was completing in his testimony, but the record indicates that this disclosure occurred on a 2012 QNSP. *See* Ex. 3.

Id. The Individual acknowledged that he made a conscious choice to misrepresent his usage out of fear that a truthful disclosure would impact his ability to obtain a clearance. *Id*. at 96. The Individual stated that he later "c[a]me clean."[9] *Id*. at 60-61, 71. He explained that "some years after" when he next completed a QNSP and talked to an investigator, he "couldn't remember exactly what [his marijuana usage] was." *Id*. at 62. The Individual stated that he then received "a response back saying that it wasn't good enough," so he "tried to estimate, which explains the difference in years."[10] *Id*. at 63.

Regarding the allegation of underage drinking, the Individual admitted that he typically consumed five to six shots of hard liquor at high school parties, and he estimated that he engaged in this behavior approximately eight times per year through the course of his high school years. *Id*. at 70.

Turning to his psychological evaluation, the Individual explained that, although the DOE Psychologist's report accurately reflected the amount of alcohol consumption the Individual disclosed – one or two beers once a month – the Individual misunderstood the question the DOE Psychologist was asking. *Id*. at 75. The Individual clarified that he thought he was reporting "an average of how much that [he] was drinking . . . over . . . an extended period of time[,]" such as a year. *Id*. He stated that there are "periods in [his] life" where he does not "have time to really even do anything to even . . . really sit down and have a beer." *Id*. at 76. As such, he was "just giving averages" to the DOE Psychologist of the amount of alcohol he thought he was consuming. *Id*.

The Individual stated that he usually consumes alcohol more frequently around the holidays when he starts seeing more of his family and may be away from work. *Id*. at 77. He also asserted that his alcohol consumption "kind of picks up a little bit" in the "March time frame" because as the weather starts to improve, he and his family get together for dinners, and he will "have a beer or two." *Id*. at 77–78. The Individual stated that, during the later part of March 2023, just prior to his psychological evaluation, he and his family would have approximately three to four dinners per week where he would consume one to two beers per dinner. *Id*. at 108–109. When asked why he thought his PEth test indicated that he was consuming more alcohol than he was reporting, the Individual was unable to explain the discrepancy and maintained that he only consumed one to two beers during his family dinners and had not been underreporting his consumption. *Id*. at 127–128, 148.

The Individual asserted that he had been abstinent from alcohol since early September 2023.[11] *Id*. at 81. He explained that he had been attending an AA program in an online forum approximately

[9] Again, the Individual was not able to provide specific dates in his testimony; however, according to the record, it appears that the Individual is referencing a 2012 ESI. *See* Ex. 3. The summary of the Individual's 2012 ESI indicates that the Individual "initially stated" that he used marijuana only once, but "[u]pon further questioning," the Individual changed his statement to reflect that he used marijuana once to twice a week from 2006 to 2009. Ex. 19 at 128–129.

[10] The Individual appeared to be referencing a 2019 LOI, in which he stated that he used marijuana "[a] couple of times" from June 2006 to 2008. Ex. 18.

[11] The Individual submitted a negative PEth test, dated November 1, 2023, in support of this testimony. Ex. S.

three times per week.[12] *Id*. at 83–84. The Individual explained that his AA program does not "really talk much about the steps." *Id.* at 111. He stated that he has "very minimal" familiarity with the 12 steps typically followed in AA. *Id*. The Individual stated that, through AA, he has learned that "there are people that really truly struggle with alcohol." *Id*. at 89. He noted that, although he listens to other people's stories and the open discussion in the group, he has not participated by sharing his own story. *Id*. at 89, 132. The Individual also stated that, while others in the group introduce themselves as "alcoholics" in the AA meeting, he does not. *Id*. at 132.

The Individual testified that he tried to find a sponsor through his AA group, but he "didn't see that [he] was getting really any response," so he asked a close friend to be his sponsor. *Id*. at 86. He noted that his sponsor "does not practice AA," but he is "sober."[13] *Id*. The Individual explained that he and his sponsor "call every couple weeks [and] . . . just kind of talk about . . . what's going on, [and] . . . he, double checks, making sure that . . . [the Individual is] staying sober." *Id*. at 87.

The Individual stated that he intends to remain abstinent from alcohol for the entirety of the recommended six months, continue participating in AA for six months, and continue to take PEth tests.[14] *Id*. at 87–88. The Individual stated that he had not had trouble maintaining his abstinence as he "didn't really drink overall a lot." *Id*. at 90. He acknowledged that although it is a problem that he made a "stupid decision" to consume alcohol and drive, he does not believe that he has a "recurring problem of struggling not to drink." *Id*. at 114. The Individual stated that his motivation to comply with the DOE Psychologist's recommendations are fifty percent motivated by maintaining his security clearance and fifty percent motivated by exploring "how did you get to the point where you're so stupid that you" consumed alcohol and drove. *Id*. at 116.

The DOE Psychologist testified after hearing the Individual's testimony. The DOE Psychologist noted that although the Individual's BAC test on the night of his arrest and the April 2023 PEth test indicate that the Individual was consuming more alcohol that he was reporting, the DOE Psychologist could not determine, at the time of the evaluation, if the Individual was intentionally underreporting, or whether he did not realize how much alcohol he was consuming. *Id*. at 167–168. However, the DOE Psychologist noted that whether or not the underreporting was intentional, the Individual's alcohol consumption was a "concern." *Id*. at 168.

Regarding the Individual's participation in AA, the DOE Psychologist noted that although the Individual's sponsor "is clearly somebody who [the Individual] trusts and who . . . has [the Individual's] best interests at heart[,]" he would "encourage [the Individual] to keep open the possibility of having a sponsor who was actually in the same program." *Id*. at 172. The DOE Psychologist further stated that he felt it was "important that [the Individual] be discussing with his sponsor and with his group questions about underreporting." *Id*. at 172. He added that he was

[12] The Individual submitted email verifications of his attendance, reflecting that he attended twenty-two meetings from September 26, 2023 to November 13, 2023. Ex. U.

[13] The Individual stated that he did not know if his sponsor was abstinent from alcohol as a result of an alcohol use disorder or if it was a personal choice based upon his position in a religious institution. Tr. at 135.

[14] It should be noted, however, that the Individual stated that he did not take a PEth test prior to November 2023 as he could not afford it. Tr. at 129.

unable to discern, based on the Individual's testimony, whether the Individual was an "active participant" in AA. *Id*. at 213.

The DOE Psychologist indicated that he was not "entirely sure" whether the Individual realizes that he may be failing to recognize how much alcohol he was consuming. *Id*. at 173. When asked whether he thought that the Individual had established adequate evidence of rehabilitation or reformation, the DOE Psychologist stated that he "feel[s] that [the Individual] is on the right track"; however, he could not commit to a definite answer until the Individual had maintained abstinence and engaged in "treatment" for a total of six months. *Id*. at 172–173.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during 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 has not mitigated the security concerns cited by the LSO under Guideline E and Guideline G of the Adjudicative Guidelines. Therefore, I find that the Individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

A. Guideline G

Conditions that may mitigate a Guideline G security concern 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol 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.

Here, the Individual was arrested for Aggravated DWI, and the DOE Psychologist subsequently determined that the Individual habitually or binge consumes alcohol to the point of impaired

judgment. He further opined that the Individual was underreporting the frequency and amount of his alcohol consumption. He recommended that the Individual remain abstinent from alcohol and engage in AA for a period of six months. At the time of the hearing, the Individual had only been abstinent from alcohol and participated in AA for a period of approximately three months. Given the relatively short period of time that the Individual has been abstinent from alcohol and participating in AA, I cannot find that he has mitigated the security concern pursuant to mitigating factor (d). *Id*. at ¶ 23(d).

Although the Individual acknowledges that his alcohol consumption was problematic in that it resulted in a DWI, he does not recognize that he was consuming alcohol in a manner that was concerning and was underreporting his consumption, whether unintentionally or otherwise. Furthermore, although I have no reason to doubt that the Individual has been abstinent from alcohol since September 2023, and he has been attending AA meetings regularly and consistently, I cannot find that he is actively or meaningfully participating in the program. He stated that he has not shared his story with the group, and although his sponsor may be a significant member of his support system, the sponsor is not involved in AA, and it unclear whether the sponsor ever consumed alcohol. As such, I cannot find that the Individual has mitigated the Guideline G security concerns pursuant to factors (b) and (c). *Id*. at ¶ 23(b), (c).

Finally, although the Individual's DWI occurred over a year prior to the hearing, being that the Individual has not yet adequately addressed the concerns related to his alcohol consumption, for the reasons stated above, I cannot find that the DWI or the Individual's problematic alcohol consumption occurred so long ago, so infrequently, or under such unusual circumstances that they are unlikely to recur or do not cast doubt on the Individual's current reliability, trustworthiness, or judgment. *Id*. at ¶ 23(a).

B. Guideline E

Conditions that may mitigate a Guideline E security concern include:

a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances,

or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

f) The information was unsubstantiated or from a source of questionable reliability; and,

g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

The LSO listed two types of concerning behavior pursuant to Guideline E: the Individual's failure to provide relevant, accurate, and required information to DOE and his pattern of dishonesty and rule violations. The record clearly shows that, beginning when the Individual completed the 2012 QNSP, he has failed to disclose the truth about his various indiscretions.

1. Failure to Report

The Individual first failed to provide an accurate report when he knowingly misrepresented his marijuana usage on a 2012 QNSP. The Individual appears to claim that he made this misrepresentation because a military recruiter implied that he should not report his past marijuana usage. Although the Individual's decision to misrepresent his marijuana usage on the suggestion of the recruiter could potentially fall within the purview of mitigating factor (b), I cannot find that it does so in this case. The Individual admitted he knew he was misreporting his marijuana usage in an attempt to secure a clearance, and therefore, it is clear that he was aware of the requirement to provide truthful information. Moreover, there is nothing in the record to indicate that the recruiter was "a person with professional responsibilities for advising or instructing the individual specifically concerning security processes." *Id*. at ¶ 17(b). As such, I cannot find that mitigating factor (b) applies here. *Id*.

Although the Individual did eventually disclose the degree of his actual marijuana usage, it was not until he was pressed on the matter during an ESI. Furthermore, despite disclosing his actual usage in the 2012 ESI, the Individual continued to provide false information regarding his marijuana usage to the DOE in the 2019 LOI. I do not find the Individual's testimony credible that the discrepancy between the disclosure in the 2012 ESI – using multiple times a week for several years– and the disclosure in 2019 LOI – using "[a] couple of times" over the course of several years – is attributable to his attempt to "estimate.". Tr. at 63; Ex. 18; Ex. 19 at 128–129. As such, I cannot find that the Individual made prompt, good faith efforts to correct the omission. *Id*. at ¶ 17(a).

Regarding the failure to report the employment disciplinary action, the Individual contends that he did not think that the disciplinary action was a "huge mistake" and, therefore, he was not thinking about it when he completed the 2018 QNSP. Tr. at 57. At the outset, I note that like the misrepresentation regarding the marijuana, the Individual appears to deflect his responsibility for the mishandling of classified hard drives, asserting that he was not properly trained by his employer and that his supervisor admitted fault. This Individual's propensity to deflect responsibility raises concerns about his trustworthiness. Furthermore, considering that the Individual had been a clearance holder at that time for a number of years, I am unconvinced that he believed that receiving a disciplinary action resulting from leaving classified hard drives unattended was a minor mistake such that he need not report it on the 2018 QNSP, especially, when considered in combination with his dishonesty on the 2012 QNSP. As such, I cannot find that this omission was so minor or occurred under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment. *Id*. at ¶17(c). Furthermore, there is no indication in the record that the Individual made any attempt to correct this omission before he was confronted about it. *Id*. at ¶ 17(a).

Turning to the 2022 DWI and the resulting hospitalization, alcohol treatment, and protective order, I note that, at the time of this incident, the Individual has been a clearance holder for nearly a decade and had undergone yearly training for the maintenance of his clearance, which includes training about the relevant reporting requirements. The Individual should have been fully aware that this incident needed to be immediately reported to DOE. The Individual claims that he did not know how or to whom to report the incident; however, there is no indication in the record that he made any effort to disclose this information to his employer or his local security office until he was confronted with it. *Id*. Furthermore, I note that the Individual indicated that he is still unsure as to how to report a required disclosure to the LSO. As such, I cannot find that this failure to report occurred under such circumstances that it is unlikely to recur. *Id*. at ¶ 17(c).

2. Pattern of Dishonesty and Rule Violations

As discussed above, the Individual has engaged in rule violations and acts of dishonesty spanning back over a decade. When considered with all the information in the record before me, I find that this establishes a pattern of conduct that supports a whole-person assessment that the Individual cannot be relied upon to reliability provide candid information to DOE and properly safeguard classified or sensitive information. *Id*. at ¶ 16(d)(3). Given that the Individual has not mitigated the security concerns associated with the behaviors that gave rise to this pattern, I similarly cannot find that the Individual has mitigated the pattern of dishonesty and rule violations.

VII. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline E and Guideline G. 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 in 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals