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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: December 20, 2023)	Case No.: PSH-24-0037
)	
_____)	

Issued: May 6, 2024

Administrative Judge Decision

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In March 2023, the Local Security Office (LSO) received an incident report that indicated the Individual was arrested and charged with Aggravated Assault with a Deadly Weapon, after the Individual left a bar and pointed a firearm at seven individuals during a fight. Exhibit (Ex.) 8 at 33; Ex. 5 at 22.² After reviewing the Individual's file, the LSO found that in August 2018, the Individual was arrested for possession of marijuana. Ex. 14 at 158. In November 2018, the Individual was arrested for "shoplifting an alcoholic beverage" from a convenience store. Ex. 5 at 22; Ex. 14 at 158.

Subsequently, the LSO provided the Individual with two Letters of Interrogatory (LOI), which the Individual completed on June 12, 2023 (June 12th LOI) and June 25, 2023 (June 25th LOI). Ex.

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

² The exhibits submitted by the DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

10. In August 2023, the Individual was evaluated by a DOE consultant psychologist (DOE Psychologist), who issued a report of her findings (the Report). Ex. 12. Based on the evaluation, the DOE Psychologist opined that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* criteria for Unspecified Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation. *Id.* at 64.

Due to the unresolved security concerns stemming from the Individual's alcohol-related arrests and alcohol consumption, the LSO informed the Individual, in a Notification Letter dated November 12, 2023, that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. Ex. 1 at 7–9. 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 J (Criminal Conduct) of the Adjudicative Guidelines. *Id.* at 5–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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. The DOE submitted fifteen numbered exhibits (Exs. 1–15) into the record and presented the testimony of the DOE Psychologist. The Individual submitted eight lettered exhibits (Exs. A–H) into the record, presented the testimony of seven witnesses, and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-24-0037 (hereinafter cited as “Tr.”).

II. NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) as a basis for suspending the Individual's security clearance. Ex. 1 at 5–6. It is well established that “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work” and a “diagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder.” *Id.* at ¶ 22(a), (d). In citing Guideline G, the LSO relied upon the DOE Psychologist's August 2023, determination that the Individual met the DSM-5 criteria for Unspecified Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation. Ex. 1 at 5. The LSO also cited the Individual's alcohol related arrest for Felony Aggravated Assault with a Deadly Weapon, and the Individual's admission that he consumed four shots of alcohol and was intoxicated before the arrest. *Id.* The LSO also cited the Individual's November 2018, arrest for “shoplifting alcohol beverages” from a convenience store. *Id.*

The LSO also cited Guideline J (Criminal Conduct) as a basis for suspending the Individual's security clearance. Ex. 1 at 5–6. Criminal activity can create doubts about a person's judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. Furthermore, it calls into question a person's ability or willingness to comply with laws, rules, or regulations. *Id.* Conditions that can raise a security concern under Guideline J include “evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of

whether the individual was formally charged, prosecuted, or convicted.” *Id.* at ¶ 31(b). In citing Guideline J, the LSO relied upon the Individual’s March 2023, arrest for Felony Aggravated Assault with a Deadly Weapon. Ex. 1 at 5. The LSO also cited the criminal complaint of the March 2023, arrest, which reflects that the Individual was “the primary aggressor,” in the altercation that led to his arrest, and pointed a firearm at seven individuals. *Id.* The LSO also cited the Individual’s November 2018, arrest for shoplifting alcoholic beverages, and his August 2018, arrest for Possession of Marijuana. *Id.* at 5–6. The LSO’s assertions in the SSC justify its invocation of Guideline G and 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. *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 2023, the Individual reported to the LSO in an Incident Report (IR) that after he and his girlfriend left a bar, he was approached by four individuals, who assaulted him, and threatened him with a gun. Ex. 8 at 33. The Individual reported that he was able to get away from the four individuals, and retrieve his firearm from his girlfriend’s car, to protect himself and his girlfriend, and stated that his actions were in self-defense. *Id.* He subsequently admitted to the LSO that he engaged in underage drinking of alcohol before the arrest. Ex. 3 at 16. He turned 21 years of age two weeks after the arrest. *Id.*

The criminal complaint of the Individual’s March 2023, arrest recounts a different version of events. Ex. 11. The complaint states that police officers interviewed seven people who were involved in the altercation with the Individual outside of a bar, all of whom were separated, interviewed, and gave “consistent statements” as to what occurred:

[The witnesses] believed a domestic violence incident was occurring between [the Individual] and his girlfriend. At one point, the altercation became physical between [the Individual] and two male subjects, at which time, [the Individual] obtained a firearm from inside a white Mercedes. [The Individual] pointed the firearm at the two subjects he was in a physical altercation with, as well as the additional five other subjects. . . . Given the totality of the entire incident, as well as the severity of the crime, to include all statements and evidence gathered on scene, it was confirmed that [the Individual] was the primary aggressor [and] did obtain and point a firearm at the seven other subjects.

Id. at 54. The complaint indicates the Individual was arrested and charged with two counts³ of Aggravated Assault with a Deadly Weapon. *Id.*

In the June 25th LOI, the Individual reported that he started consuming alcohol when he was about 20 years old and that his alcohol consumption has increased within the last five years. Ex. 9 at 38. He also reported that before his March 2023, arrest, he consumed four shots of alcohol, between 10:00 p.m. and 11:00 p.m. *Id.* at 35. He also reported that none of his charges were related to alcohol. *Id.*

From April 2023 to February 2024, the Individual participated in a Fitness for Duty (FFD) evaluation, during which he was required to attend alcohol education classes and submit to periodic alcohol testing. Ex. 9 at 35–36; Ex. A at 6. From April 2023 to January 2024, the Individual underwent weekly Ethyl Glucuronide (EtG) and Breath Alcohol Concentration (BAC) testing, the results of which were all negative. Ex. A at 7–48. The Individual reported that he completed a six-week alcohol awareness and education class, with a Licensed Professional Counselor, through his employer’s Employee Assistance Program (EAP) (the EAP Counselor) and he also met with an Occupational Medicine Psychologist (the Occupational Psychologist). Ex. 9 at 35; Ex. 10 at 50. In the June 25th LOI, the Individual also reported that he had not consumed alcohol since the March 2023, arrest. Ex. 9 at 37–38.

In May 2023, the Individual’s Occupational Psychologist learned that a person, who was with the Individual and witnessed the events leading up to the 2023, arrest, provided an account of the arrest inconsistent with that provided by the Individual to another psychologist during a Human Reliability Program assessment.⁴ Ex. 12 at 61–62.

³ Although the Individual allegedly pointed his firearm at seven individuals, five out of the seven victims did not want to pursue charges. Ex. 11 at 54. Two individuals told police officers that they chose to pursue charges against the Individual because they feared “potential battery that could cause severe injury or death.” *Id.*

⁴ The witness reported that the Individual was fighting in the parking lot with his girlfriend, when the witness’s friend told the Individual to go home because the Individual was intoxicated. Ex. 12 at 61–62. The witness stated, “Things escalated and [the Individual] started fighting with everyone out there and [the Individual] ended up on the ground.” *Id.* at 61. He then got up, went to his car, and “pulled out a gun with some sort of [laser] sight on the bottom of it.” *Id.* The witness stated that the Individual “tried to level it at the people, roughly 10 people had accumulated outside, including me and my girlfriend, though we weren’t involved in the fight. His girlfriend was holding his arms to try to stop him from pointing the gun.” *Id.* at 60–61.

During an interview with an investigator from the Office of Personnel Management (OPM), the Individual explained the circumstances of his 2018 arrests. Ex. 14 at 147–48. The Individual told the investigator that before his August 2018 arrest for possession of marijuana, he was involved in a fight at his high school. Ex. 14 at 147. After the fight, his backpack was searched by school security, who found marijuana in his backpack. *Id.* The Individual was arrested for possession of marijuana and was suspended from his school. *Id.* He told the investigator that he was “holding” the marijuana for a friend. *Id.* As to his November 2018 arrest for shoplifting an alcoholic beverage, the Individual told the OPM investigator that while he was at a convenience store with two of his friends, one of his friends stole a bottle of alcohol and got caught. Ex. 14 at 148. He claimed he did not know the friend stole a bottle and he was “held at the store until his parents picked him up.” *Id.*

On August 2, 2023, the Individual underwent a psychological evaluation with the DOE Psychologist, which included a clinical interview (CI). Ex. 12. During his CI, he reported that before his March 2023, arrest, he and his girlfriend were leaving a bar, after which they were “assaulted and beaten by a group of people neither of them knew.” *Id.* at 59. The Individual told the DOE Psychologist that he was able to “escape,” retrieve his firearm and “showed it” to the group, and “the people dispersed.” *Id.* The Individual also reported that before the arrest, he consumed four shots of alcohol. *Id.* at 60. He stated that he started consuming alcohol as a teenager, but did not do so regularly, and never became intoxicated. *Id.* at 62.

On August 7, 2023, the DOE Psychologist conducted a telephone consultation with the Individual’s Occupational Psychologist. Ex. 12 at 61. The Report indicates the Occupational Psychologist reported that the Individual did not arrive for his initial FFD appointment.⁵ *Id.* The Individual initially claimed that he was not aware of the appointment. *Id.* But, after the Occupational Psychologist told the Individual that two notices were sent to his personal email, he admitted he did not check his email “that often.” *Id.* The Report also indicates the Individual told the Occupational Psychologist that before his March 2023, arrest, “he and [his girlfriend] had been arguing in the brewpub earlier that evening but had not during the incident.” Ex. 12 at 61. However, during his CI with the DOE Psychologist, he denied that he and his girlfriend had been arguing that evening. *Id.*

The Occupational Psychologist also told the DOE Psychologist that the Individual reportedly underwent a breathalyzer test at the time of his arrest, and “blew a 0.11 something.” *Id.* at 60; Ex. 15 at 3. However, during the CI, the Individual denied that he had underwent a breathalyzer test. Ex. 12 at 60. The Occupational Psychologist also told the DOE Psychologist that the Individual is “immature . . . and does not care about the law . . . [is not] an accurate historian . . . [and] likely abuses alcohol when he drinks.” *Id.* at 61–62. The Occupational Psychologist stated that the Individual “didn’t seem to gain any more insight into his behavior” after attending the EAP alcohol education class, and she stated she has “serious concerns” about the Individual’s “ability to be a responsible clearance holder.” *Id.*

⁵ The Occupational Psychologist provided a report of her FFD assessment of the Individual to the DOE Psychologist. Ex. 15. The DOE Psychologist’s Report references multiple statements from the FFD assessment. Ex. 12 at 60–62.

As part of the evaluation, the Individual underwent a PEth test, the result of which was negative, which provided medical evidence the Individual “ha[d] not been drinking on a regular, heavy basis within a few weeks of the test, and ha[d] not had binge drinking episodes or moderate drinking within about one week of the test.” *Id.* at 63, 81–82. The DOE Psychologist noted she had concerns regarding the Individual’s honesty due to the “stark differences” in his reports of his March 2023, arrest, and his failure to admit he “simply did not attend” his initial meeting with the Occupational Psychologist. *Id.* at 64. She also noted that the “combination of intoxication and possession of a deadly weapon represents an example of poor, and potentially dangerous, judgment.” *Id.*

The DOE Psychologist concluded in the Report that the Individual met sufficient diagnostic criteria for Unspecific Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation. *Id.* at 64. She opined that the Individual “would benefit from additional intervention to address his alcohol use in either a group or individual setting, lasting for no fewer than six months.” *Id.* The Individual was also recommended to remain abstinent during the six-month period, supported by monthly PEth testing. *Id.* The DOE Psychologist also recommended that the Individual’s treatment include a “motivational enhancement component,” and address the Individual’s lack of honesty. *Id.* Lastly, the DOE Psychologist wrote that if the Individual “chooses a path of reformation rather than rehabilitation (i.e., participation in a professional program),” he should remain abstinent for twelve months, supported by monthly PEth testing. *Id.*

At the hearing, the EAP Counselor testified that in April 2023, the Individual began participating in her six-week, Alcohol Awareness and Education class. Tr. at 16. She stated the Individual had excellent attendance and was focused during the meetings. *Id.* at 17. The Individual submitted documentation he successfully completed the six-week Alcohol Awareness and Education class in May 2023. Ex. D. The EAP Counselor also testified that six months after completing her Alcohol Awareness and Education class, in November 2023, the Individual enrolled in her twelve-week course, titled “Maintaining Changes.” *Id.* at 17. She stated that since the Individual started taking her six-week class, he has shown maturity by making his attendance at the classes a priority, being a responsible father, and pursuing individual counseling with her. *Id.* at 33–34. She also stated the Individual shared with her that he recently had a baby, which has “really changed him,” and that he likes being sober because he can “think more clearly.” *Id.* at 18–19. She also stated the Individual’s prognosis is “very good.” *Id.* at 19.

The Individual’s superintendent, who is one of his supervisors, and his direct supervisor both testified on his behalf. Tr. at 38–48, 51–58. They both stated that they have known the Individual for three years and were aware of the security concerns regarding the Individual’s alcohol consumption and criminal conduct. *Id.* at 39–40, 52–53. The superintendent and the supervisor both asserted that they have never suspected that the Individual has an alcohol problem. *Id.* at 41, 53–54. Both witnesses stated they found the Individual to be reliable and trustworthy, and the supervisor stated that the Individual has good judgment in the workplace. *Id.* at 41–42, 54. The Individual submitted a copy of his June 2023, performance evaluation, and a copy of a spot award for “outstanding performance and lasting contribution” in August 2022. Ex. B; Ex. C at 1.

The Individual’s mother testified that the Individual told her that on the evening of his March 2023, arrest, he and his girlfriend were at a bar, and as they were leaving, the Individual’s girlfriend got into a confrontation with another woman. *Id.* at 93. The mother stated the Individual was assaulted, went back to his car, and retrieved a gun. *Id.* When questioned about the “inconsistencies” between

what the Individual told her about his arrest and the details in the criminal complaint, which she had read, she said, “there is a lot of funny stuff that has taken place . . . people are covering for each other.” *Id.* at 101–02. She stated she has never seen any physical violence or arguments between the Individual and his girlfriend. *Id.* She stated that she last saw him drink alcohol over a year ago. *Id.* at 93, 101. She stated the Individual told her he understands that alcohol is not something he needs in his life. *Id.* at 106–07.

The Individual’s girlfriend testified that she has known the Individual for ten years, they have lived together for five months, and they have a three-month old child. *Id.* at 112–13. She stated on the date of the Individual’s March 2023, arrest, she drove the Individual to a bar to pick up a television. *Id.* at 113, 121. She stated that at the bar, neither she nor the Individual ordered any alcohol, but one of the bartenders knew her brother well, so “alcohol kept coming to the[ir] table.” *Id.* at 114. The girlfriend stated she and the Individual had both consumed too much alcohol and were unfit to drive. *Id.* at 114–15. So, she asked her mother to pick them up from the bar. *Id.* at 115. The girlfriend stated that as they were walking outside of the bar, a woman pushed her, and the Individual tried to help her. *Id.* at 114. She said that as the Individual tried to help her, a group of men attacked him. *Id.* She stated the Individual was able to break free and they both walked to her car, where the Individual retrieved his gun and “displayed” it to the men by pointing it in the air and showing it to them. *Id.* at 116, 126. After the Individual displayed the gun, the men went back inside the bar. *Id.* at 116. The girlfriend claimed she and the Individual did not argue at any point before the arrest. *Id.* at 121.

When asked about the details of the arrest contained in the criminal complaint, she stated that the witnesses said what they said to justify their actions, and the witnesses were all lying. *Id.* at 125. She stated the Individual told her that he wished he would have thought before he acted, and he wished he would have just called the police. *Id.* at 131. The girlfriend further testified that since the arrest, she has not seen the Individual drink alcohol. *Id.* at 126. She stated the Individual told her he intends to not drink alcohol again. *Id.* at 117. She stated that since the Individual stopped drinking, he has learned to handle situations with more composure and is more thoughtful about what he is going to do, which has helped with his reactions. *Id.* at 117, 127. The girlfriend also stated the recent birth of his daughter has affected him, as he is more patient, protective, and responsible. *Id.* at 118. She also stated that the Individual now controls his impulses and has shown good judgment. *Id.* at 119–20.

The Individual’s girlfriend’s brother testified that he was present at the bar on the evening of the Individual’s March 2023, arrest. *Id.* at 135. Once his sister and the Individual decided to leave the bar, he saw a couple of people follow them outside. *Id.* at 136. After a few minutes, he went outside, and saw three men had the Individual down on the ground and were punching and kicking him. *Id.* at 136–37. He also testified that on the day of the Individual’s March 2023, arrest, he did not see the girlfriend and the Individual arguing. *Id.* at 139.

After the Individual enrolled in the Maintaining Changes class, he voluntarily sought additional counseling with a therapist to address his alcohol consumption and his decision-making. *Tr.* at 164. The Individual’s therapist testified that the Individual started counseling sessions with her in December 2023. *Id.* at 62. The Individual’s therapist testified that during her assessment of the Individual, she diagnosed him with AUD, mild to moderate. *Id.* at 86. However, she stated she agreed with the DOE Psychologist’s diagnosis. *Id.* at 62. She stated that she received a copy of the

Report two weeks before the hearing. *Id.* at 71. She testified that since December 19, 2023, she holds weekly counseling sessions with the Individual, and they have had twelve sessions so far. *Id.* at 70. The therapist stated that the Individual told her that before his March 2023, arrest, he and his girlfriend were drinking alcohol at a bar. *Id.* at 72. Upon leaving the bar, they were “jumped,” and in response to that, the Individual brandished a firearm. *Id.* She stated the Individual did not mention having any disagreement with his girlfriend. *Id.*

The therapist explained that the focus of the Individual’s treatment has been his alcohol consumption and his decision-making. *Id.* at 72. She stated that she uses “motivational interviewing” as the primary approach in his treatment which helps him maintain his sobriety and develop a relapse prevention plan. *Id.* at 62–63. She stated the Individual also worked on his decision-making skills, his emotional regulation skills, his stressors, being reactive, identifying people in his support system, and how his emotions contribute to his behavior. *Id.* at 63. When asked if the Individual’s sessions included discussions of his honesty, she stated that because of the delay in her receiving the Report, she has not focused on the Individual’s honesty issues in his treatment. *Id.* at 73. The therapist indicated that the Individual’s priorities have kept him from drinking. *Id.* at 74. She stated the birth of the Individual’s child and being able to identify high risk situations has helped him reinforce the need to remain abstinent and not engage in high-risk behaviors. *Id.* at 65.

The therapist stated the Individual’s attendance has been exemplary, he has followed her treatment recommendations, and he is making satisfactory progress in his treatment. *Id.* at 63, 65–66. The therapist testified that based on the Individual’s current status, she would change his diagnosis to alcohol abuse disorder, in remission. *Id.* at 62. When asked if the Individual expressed having any concerns abstaining from alcohol, she stated that “reports of struggles abstaining have not been a part of the program” as abstinence has been “one of the easier parts” of his treatment. *Id.* at 64. The therapist stated that, initially, the Individual’s treatment was to last six months, but he Individual notified her that he wants to continue treatment. *Id.* at 75. She stated the Individual’s prognosis is good. *Id.* at 66. Finally, she recommended that the Individual continue with therapy and maintain a relapse prevention plan. *Id.* at 79–80.

Regarding the Individual’s 2018 arrests, he testified about the circumstances consistent with how he reported them during the OPM investigation. *Id.* at 143–45. Turning to the March 2023, arrest, the Individual testified that he went with his girlfriend to a bar and while at the bar, he drank approximately four shots of alcohol and became intoxicated. *Id.* at 145–46, 170. He and his girlfriend called the girlfriend’s mom to pick them up from the bar. *Id.* at 146. He stated that when they went outside, a woman from the bar pushed his girlfriend, and he tried to help. *Id.* at 147. However, he later testified that he did not see his girlfriend get pushed. *Id.* at 172. He stated he was assaulted by two or three people and his girlfriend was also attacked. *Id.* at 147. The Individual submitted photographs depicting injuries he claimed he suffered during the attack. Ex. G. He stated that at some point he broke free, went to his girlfriend’s car, got a gun, and “showed the gun” to the people who attacked him. *Id.* at 152–53. He stated he was not sure if he pointed the gun at them, but he made it “visible” to them. *Id.* at 152. He said that after showing the gun, the crowd went back inside the bar. *Id.* at 153, 182. The Individual asserted that brandishing the firearm was “self-defense” and although he “handled it wrongly, . . . [he] was still defending [himself] and a loved one, and ultimately it did end the whole situation from escalating more.” *Id.* at 203.

The Individual was questioned about the description of his March 2023, arrest that he provided to the LSO in the IR, in the June 12th LOI, and in his FFD evaluation. Tr. at 177–83; Ex. 8; Ex. 10; Ex. 15. He testified that in reporting the arrest in the IR and FFD evaluation, he “forgot to mention” that he heard someone say they had a gun. *Id.* at 179–80. He then testified that the people that assaulted him did not in fact threaten to use their firearms on him, although he had previously reported in the IR that they had threatened him with firearms. *Id.* at 180. He also stated that he “just . . . left out” information about his girlfriend getting attacked in the IR and FFD evaluation. *Id.*

The Individual stated that he did not argue with his girlfriend at the bar on the date of his March 2023 arrest, but they had a disagreement about food earlier in the day. *Id.* at 170, 199. He asserted that the Occupational Psychologist’s FFD report contained a mistake in stating that he told the Occupational Psychologist that he had argued with his girlfriend at the bar. *Id.* at 170–71; Ex. 15 at 3. When asked about the account provided by another employee of the contractor, who reported that he saw him fighting with his girlfriend in the parking lot, the Individual stated that the employee provided that account so he would not get into trouble with his employer. *Id.* at 154. He admitted that he told the police that he and his girlfriend had a “little disagreement about food and [he] think[s] they just took it the wrong way.” *Id.* at 200. The Individual stated his criminal case is still open, he is contesting the charges, and he has a court hearing related to this arrest in July 2024. *Id.* at 194. He made assurances that he would no longer engage in criminal activity by stating that now he has a family, so his priorities have changed. *Id.* at 203.

Regarding his alcohol treatment, the Individual testified that after his March 2023, arrest, he was placed in the FFD program for ten months, during which he was required to undergo alcohol testing. Tr. at 156–57, 159. He submitted documentation of twenty-five random weekly EtG tests and BAC tests, and four PEth tests, taken between April 2023 and March 2024, all of which were negative. Ex. A. The Individual testified he completed a six-week alcohol awareness and education class with the EAP Counselor. Tr. at 160. He stated that after he received the Report, on November 30, 2023, he enrolled in the 12-week class, Maintaining Changes, and must take one more session to complete that class. *Id.* He stated he also voluntarily participated in personal counseling sessions where he learned how his decisions have affected his priorities, and to think before he acts. *Id.* at 163–64. He also stated he has found ways to handle stress, such as playing video games, exercising, and working on his car. *Id.* at 165–66. He stated he plans to continue his personal counseling as long as his therapist recommends it, and he can still learn from it. *Id.* at 167. He stated the last time he consumed alcohol was the night of his March 2023, arrest, and he plans to no longer consume alcohol. *Id.* at 155.

The DOE Psychologist testified that her initial diagnosis of unspecified alcohol related disorder was warranted because of his repeated consumption of alcohol while underage, his binge drinking before the incident, his brandishing the firearm during the incident, and the high-risk situation he put himself in. *Id.* at 209. She also stated she had concerns with the Individual’s honesty because of “several discrepancies” she found during the CI regarding the Individual’s description of what occurred on the date of his March 2023 arrest. *Id.* Therefore, she recommended that his honesty needed to be addressed in his therapy. *Id.* at 210. She also stated that the Individual had “a defensive stance about some of his problems,” so she recommended that his therapy include a “motivational enhancement,” which is an effective approach used for people who are initially resistant to therapy. *Id.* at 210–11.

The DOE Psychologist stated the Individual acknowledged his maladaptive alcohol consumption, and that the birth of his child was a motivating factor that changed his attitude toward alcohol. *Id.* at 212–13. She described his completion of the EAP Counselor’s six-week and twelve-week classes, as “positive,” and noted the Individual completed her recommended alcohol testing. *Id.* at 211–12. She opined that as of the hearing date, she would diagnose the Individual’s alcohol related disorder as being in remission, because he has remained abstinent for over a year. *Id.* at 214. She also opined that the Individual has demonstrated rehabilitation from his alcohol-related disorder. *Id.*

However, she further testified that she remained concerned about the Individual’s honesty, which still needs to be addressed in his therapy. *Id.* at 214–15. The DOE Psychologist stated that although the Individual testified that he made “mistakes” leading up to his March 2023, arrest, she found he did not take complete responsibility for his actions. *Id.* at 212. She explained that the Individual engaged in “a little bit of hedging” about his use of a firearm by stating that although he should “not have brandished the gun, it is what broke everything up.” *Id.* She also noted the Individual’s explanations for his 2018 arrests indicate not accepting responsibility, as the Individual asserted that the marijuana found in his bag in August 2018 was someone else’s, and his arrest for shoplifting was caused by him being with “the wrong crowd.” *Id.* The DOE Psychologist estimated that the Individual should undergo another four to six months of treatment to address his honesty issues. *Id.* at 220.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the regulations at 10 C.F.R. § 710.7(a), the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security. After due deliberation, I have determined that although the Individual has sufficiently mitigated the Guideline G security concerns, he has not mitigated the Guideline J security concerns. I cannot find that restoring the Individual’s DOE security clearance will not endanger the common defense and security and is consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security clearance should not be restored. The specific findings that I make in support of this Decision are discussed below.

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.

I find that the second and third mitigating factors under Guideline G are applicable in this case. Regarding the second factor, the Individual acknowledged his maladaptive alcohol use and has taken steps to address his alcohol related disorder. The Individual's witnesses, including his mother, girlfriend, and therapist, testified as to the changes in the Individual's perspective and priorities since the birth of his daughter, and his willingness to abstain from alcohol so he can achieve his goals. Since his diagnosis, eight months ago, the Individual submitted evidence that he successfully completed eighteen weeks of alcohol treatment with his employer's EAP. In addition, he submitted documentary evidence he has undergone weekly alcohol testing for the past ten months, all of which showed negative results, which I find is sufficient to establish a clear and established pattern of abstinence from alcohol. Finally, the DOE Psychologist opined that the Individual has been rehabilitated from his alcohol related disorder. For these reasons, I find the Individual has met the second mitigating condition under Guideline G. *Id.* at ¶ 23(b).

Furthermore, since December 2023, the Individual has been participating in sessions with his personal therapist, focused on his alcohol consumption. The Individual's therapist testified that the Individual's attendance has been exemplary, and he is making satisfactory progress with the treatment program. She also stated that although the Individual's treatment has not included a discussion of his honesty, it has included a re-alignment of his values, which has reinforced his need to maintain his sobriety. The therapist also opined that the Individual's prognosis was good. There is nothing in the record that indicated that the Individual has had a history of treatment followed by relapse. For these reasons, I find the Individual has met the third mitigating condition under Guideline G. *Id.* at ¶ 23(c).

Finally, as to the Individual's November 2018, arrest for shoplifting an alcoholic beverage, because the Individual has demonstrated rehabilitation from his alcohol-related disorder, I find that he is unlikely to engage in any future criminal activity that is directly related to his alcohol misuse.

B. 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.

As an initial matter, I note that the criminal conduct raised as a security concern by the LSO includes the Individual's March 2023, arrest for Felony Aggravated Assault with a Deadly Weapon, which is a serious offense. I also note that I have been unable to determine exactly what happened on the date of the Individual's arrest because the record, including the hearing testimony, is replete with unresolved inconsistencies. For example, in his IR the Individual reported that the people who assaulted him threatened to use their guns on him. However, at the hearing, he testified that the assailants did not threaten him with guns. Also, in the IR and the FFD evaluation, the Individual did not report that his girlfriend was attacked, however, in his June 12th LOI and in his hearing testimony, he stated that his girlfriend was attacked. Moreover, the Individual denies that he had been fighting with his girlfriend at the bar, despite the fact that he admitted to arguing with his girlfriend to the Occupational Psychologist, and the criminal complaint contains an account from several witnesses stating they observed him arguing with his girlfriend at the bar. The unresolved inconsistencies surrounding the Individual's March 2023 arrest leaves me with significant doubts concerning the Individual's credibility and truthfulness regarding the incident.

Regarding factor (a), I do not find that the security concerns are mitigated by the passage of time or the circumstances of the Individual's conduct. The Individual was charged with criminal offenses in 2018 and demonstrated a five-year period of avoiding criminal activity only to later reoffend in 2023. Moreover, the Individual's explanations for all three of his criminal offenses reflect a lack of accepting responsibility for his behavior. Regarding his 2018 shoplifting charge, the Individual asserted that it was his friend who stole alcohol. Regarding his 2018 charge for

marijuana possession, he asserted that he was “holding” marijuana for his friend. With these assertions, the Individual has not demonstrated that he has accepted responsibility for his role and involvement in the situations leading to each arrest.

Similarly, regarding his 2023 arrest and charge, the Individual’s conflicting reports and his claim that he solely acted in self-defense, despite evidence indicating otherwise, shows he has not taken responsibility for his behavior. Due to this ongoing pattern, I find the Individual has not presented sufficient evidence for me to conclude that the passage of time has mitigated the security concerns. Moreover, the Individual’s March 2023, arrest was for a serious offense that occurred just one year before the hearing, and the inconsistencies surrounding the circumstances of the Individual’s arrest have not been resolved. Given the Individual’s history of criminal conduct, combined with the gravity of his behavior in connection with the 2023 arrest, and his failure to take responsibility for his conduct, I am unable to conclude the Individual’s criminal behavior is unlikely to recur and does not cast doubt on his good judgment. Therefore, I find he has not mitigated the security concerns under ¶ 32(a).

Regarding factor (b), the Individual does not assert, nor is there evidence, that he was pressured or coerced into committing the acts for which he was arrested. Therefore, I find the Individual has not mitigated the security concerns under ¶ 32(b). Similarly, regarding factor (c), the Individual has not asserted, nor is there evidence, that the facts used to support his criminal arrests in 2018 and 2023 were not from reliable sources. Therefore, the Individual has not mitigated the security concerns under ¶ 32(c).

Regarding factor (d), I note that although the Individual submitted evidence of positive work performance as well as personal growth through his alcohol treatment classes, this is not sufficient evidence for me to find successful rehabilitation from the criminal conduct as less than a year has elapsed since he last engaged in such behavior, and as noted above, he has still not demonstrated complete honesty and accountability for his actions. Therefore, I find the Individual has not mitigated the security concerns under ¶ 32(d).

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 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns under Guideline G, but not under Guideline J. 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