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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: March 6, 2024 )  
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Case No.: PSH-24-0078

Issued: August 2, 2024

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

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

**I. Background**

The Individual, who had filed his Questionnaire for National Security Positions on January 13, 2022, has an extensive history of criminal activity and disregard for the law that includes four alcohol-related arrests. In addition, a DOE-contracted Psychologist (Psychologist) evaluated the Individual at the Local Security Office’s (LSO) request and found that he met sufficient criteria for Alcohol Use Disorder (AUD), Severe, pursuant to the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision* (DSM-5-TR).<sup>2</sup> Moreover, the Individual failed to comply with DOE Order 472.2A which requires applicants for security clearances to report arrests to the LSO within three days.

**A. Criminal Activity**

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<sup>1</sup> Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> The exhibits submitted by 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.

On July 23, 2022, police arrested the Individual and charged him with Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs (DUI), Failure to Give Immediate Notice of Accidents, Failure to Stop Upon Striking Unattended Vehicle, and No Proof of Insurance. Ex. 11 at 59.<sup>3</sup> Because the Individual refused to submit to a breath test at the time of this arrest, his license was revoked. Ex. 11 at 60, 80. On January 17, 2023, the Individual was arrested and charged with Driving While License Revoked. Ex. 11 at 60, 78. Although the Individual was a security clearance applicant, and therefore required to report any arrests to the LSO, he did not report either of these arrests until he filed an Incident Report with the LSO on January 23, 2023.<sup>4</sup> Ex. 11 at 57.

These incidents were just the latest examples of a long-term pattern. On June 19, 2020, police cited and charged the Individual with Operation of Uninsured Motor Vehicle on Public Roadway.<sup>5</sup> Ex. 13 at 109; Ex. 17 at 315–16, 48, 50. After police cited and charged the Individual with Speeding on September 29, 2019, he failed to appear in court and the charge defaulted to guilty with a fine which remains unpaid. Ex. 13 at 108–09; Ex. 17 at 316, 48, 51. On August 5, 2018, police arrested and charged the Individual with Disorderly Conduct (Disturb the Peace) and Criminal Damage to Property.<sup>6</sup> Ex. 13 at 94–97; Ex. 16 at 124; Ex. 17 at 314, 46–47, 56, 76–77. The Individual admitted that he had been consuming alcohol prior to this incident. Ex. 13 at 94. On May 31, 2018, police arrested and charged the Individual with Aggravated Battery (Household Member), Criminal Damage to Property (Household Member) (Under \$1000), and Resisting, Evading or Obstructing an Officer. Ex. 13 at 92–94; Ex. 16 at 218; Ex. 17 at 313–14, 355, 76. The Individual admitted that he had consumed six to eight beers prior to this arrest. Ex. 13 at 92. On October 27, 2013, police cited and charged the Individual with Speeding, and a warrant was issued on December 17, 2013.<sup>7</sup> Ex. 17 at 315–16, 45, 52. On September 1, 2007, police cited and charged the Individual for Child Restraints and No Proof of Insurance.<sup>8</sup> Ex. 12 at 83–85; Ex. 13 at 89; Ex. 17 at 314–15, 43–44. On January 7, 2007, police arrested and charged the Individual with DUI, Required Position and Method of Turning at Intersection, Vehicle Approaching or Entering Intersection (Failure to Yield), No Insurance, Open Container (Consumption or Possession in a Motor Vehicle), and Driving While License Suspended/Revoked. Ex. 13 at 89–90, 111; Ex. 16 at 216; Ex. 17 at 312–13, 21, 56–57, 74–75.

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<sup>3</sup> As a condition of his release from detainment after this DUI, a court ordered the Individual to abstain from alcohol use. Ex. 7 at 66.

<sup>4</sup> After submission of his Incident Report, the Individual's employer required him to undergo a Fitness for Duty evaluation (FFDE), administered by his employer's Employee Assistance Program (EAP). Ex. 10 at 54–55. Under the terms of the FFDE, the Individual was required to: abstain from alcohol use, attend a six-week EAP class on Alcohol Awareness and Education, attend an outpatient treatment program, attend individual counseling, and undergo daily breathalyzer and weekly ethyl glucuronide (EtG) tests. Ex. 14 at 125–26.

<sup>5</sup> After the Individual failed to appear in court, an Arrest Warrant was issued for his Failure to Appear. Ex. 17 at 348, 50. The Warrant is currently active with pending charges. Ex. 17 at 350.

<sup>6</sup> He failed to appear at a pre-trial on September 12, 2018, and a Bench Warrant was issued. Ex. 13 at 96; Ex. 17 at 314, 47. The Warrant is currently active with pending charges. Ex. 17 at 368–69.

<sup>7</sup> The Individual was arrested on the Warrant on August 19, 2016. Ex. 17 at 372.

<sup>8</sup> As a result of these charges, in 2012, a court issued a Warrant for the Individual's arrest for Failure to Pay and Contempt of Court. Ex. 12 at 85; Ex. 17 at 343–44.

On October 3, 2023, the Individual responded to a Letter of Interrogatory (LOI) issued to him by the LSO seeking information about his arrests and alcohol use. Ex. 13 at 117. His response confirmed that he had used alcohol prior to the 2007 DUI, the 2018 Aggravated Battery incident, the 2018 Disorderly Conduct incident, and the July 23, 2022, DUI. Ex. 13 at 89–99. The Individual claimed that he last consumed alcohol in July 2023 when he had “9 or 10 beers in 3 hours” despite acknowledging that a condition of his release was “no drinking.” Ex. 13 at 100, 104. The LOI asked the Individual why he did not timely report the July 23, 2022, DUI to the LSO as required by DOE Order 472.2A. Ex. 13 at 114–15. The Individual responded by stating “I feel like I was being falsely accused of something that I didn’t do, and I’ve been going to court and fighting my case.”<sup>9</sup> Ex. 13 at 115.

### **B. Psychological Evaluation of the Individual**

At the LSO’s request, the Psychologist conducted a psychological evaluation of the Individual. Ex. 14 at 127. The Psychologist conducted a clinical interview of the Individual on November 13, 2023. Ex. 14 at 130. During the interview, the Individual disclosed that he had blacked out after drinking approximately once per month in 2022. Ex. 14 at 124. He also self-reported that he was sober from January 2023 until June 2023 when he resumed drinking. Ex. 14 at 124. At the time of the interview, the Individual reported that he was consuming six to eight beers at a sitting on a weekly basis. Ex. 14 at 124. The Psychologist also reviewed the Individual’s personnel security file, administered the Personality Assessment Inventory (PAI) to him, had him undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption, and consulted with his current treatment providers. Ex. 14 at 121, 25–26, 28. The Individual’s PEth test was positive at 116 ng/mL, and his PAI results indicated significant elevations on the Alcohol Problems Scale. Ex. 14 at 127–28. One of his treatment providers, whom he saw in connection with the FFDE, confirmed that the Individual had four relapses after his July 23, 2022, DUI. Ex. 14 at 125.

On November 21, 2023, the Psychologist issued a report (the Report), in which he found that the Individual met sufficient DSM-5-TR criteria for a diagnosis of AUD, Severe. Ex. 14 at 129. He also opined there was inadequate evidence of rehabilitation or reformation, and that the Individual could demonstrate rehabilitation or reformation by: (1) enrolling in an Intensive Outpatient Treatment Program (IOP); (2) engaging in aftercare support for one year; (3) abstaining from alcohol use for two years; and (4) submitting monthly PEth test results. Ex. 14 at 129–30.

### **C. Present Administrative Review Proceeding**

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it received derogatory information creating substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 10–12. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. *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 the Administrative Judge in this matter. At the hearing I convened pursuant

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<sup>9</sup> The Individual eventually pled guilty to this DUI. Transcript of Hearing, OHA Case No. PSH-24-0078 (hereinafter cited as “Tr.”) at 36, 76.

to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual; two of his supervisors (Supervisor 1 and Supervisor 2); his Court Compliance Officer (CCO); and the Psychologist. *See* Tr. The DOE Counsel submitted seventeen exhibits, marked as Exhibits 1 through 17. The Individual submitted six unmarked exhibits, which I have designated as Exhibits A through F: Exhibit A is a picture of the CCO's business card; Exhibit B is the Individual's March 9, 2023, Certificate of Completion for a six-week class titled Alcohol Awareness and Education; Exhibit C is a picture of a business card for a proposed witness, who ultimately did not appear to provide testimony; Exhibit D is a picture of an envelope bearing Supervisor 1's contact information; Exhibit E is a sticky note bearing Supervisor 2's contact information; and Exhibit F is the Individual's Certificate of Completion for an outpatient treatment program, dated September 21, 2023.

## **II. The Summary of Security Concerns (SSC)**

The SSC attached to the Notification Letter informed the Individual that information in the possession of the DOE creates substantial doubt concerning his eligibility for a security clearance under Guidelines E (Personal Conduct), G (Alcohol Consumption), and J (Criminal Activity) of the Adjudicative Guidelines.

### **A. Guideline E**

Under Guideline E, the LSO cited the Individual's failure to timely report his July 23, 2022, arrest to the LSO as required by DOE Order 472.2A. Ex. 1 at 6. The LSO further cited the Individual's statement that he failed to timely report the July 23, 2022, arrest because he believed he was falsely accused. Ex. 1 at 6. This information adequately justifies the LSO's invocation of Guideline E. Under Guideline E, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. Conditions set forth in the Adjudicative Guidelines that could raise a disqualifying concern include "[d]eliberately . . . concealing or omitting information, concerning relevant facts to a[] . . . security official . . . involved in making a recommendation relevant to a national security eligibility determination." Adjudicative Guidelines at ¶ 16(b).

### **B. Guideline G**

Under Guideline G, the LSO cited the Psychologist's conclusion that the Individual met sufficient DSM-5-TR criteria for a diagnosis of AUD, Severe, as well as the Individual's four alcohol-related arrests. This information adequately justifies the LSO's invocation of 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 "alcohol-related incidents away from work . . ." and "diagnosis by a duly qualified medical or mental health professional (e.g. . . . clinical psychologist . . .) of alcohol use disorder." Adjudicative Guidelines at ¶ 22(b), (d).

### **C. Guideline J**

The LSO also invoked Guideline J (Criminal Activity) of the Adjudicative Guidelines. Under Guideline J, the LSO cited the Individual's history of nine arrests and citations. This information adequately justifies the LSO's invocation of 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[.]" Adjudicative Guidelines at ¶ 31(b).

### **III. Regulatory Standards**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (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 their eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. Hearing Testimony**

#### **A. Testimony from the Individual's Supervisors and Court Compliance Officer**

Supervisor 1 testified that he has known the Individual for approximately four-and-a-half years both as a co-worker and supervisor. Tr. at 16. He indicated that the Individual was "hard working" and "trustworthy" and that he had not witnessed the Individual exhibit any alcohol-related problems at the workplace. Tr. at 16, 19. Supervisor 1's interactions with the Individual outside of work, however, are limited to side jobs. Tr. at 17.

Supervisor 2 testified that he has known the Individual for approximately three years as a co-worker and supervisor. Tr. at 24. He testified that the Individual performs his work "flawlessly"; is highly knowledgeable, and can be trusted to perform "critical jobs[.]" serves as temporary

foreman, and teaches apprentices. Tr. at 25–26, 28–29. He also indicated that, based on his own experience and observation, the Individual had no alcohol-related issues at work. Tr. at 25. Supervisor 2 testified that he does not socialize with the Individual outside of work. Tr. at 27.

The CCO testified that he has known the Individual for approximately two months. Tr. at 34. He confirmed that the Individual had pled guilty to the July 23, 2022, DUI.<sup>10</sup> Tr. at 36. According to the CCO, in November 2023, the Court sentenced the Individual to supervised probation, a fine of \$1,000, alcohol and drug testing, installation of an interlock on his car, and 48 hours of community service. Tr. at 37. The Court further required the Individual to attend either a 90-day outpatient or a 28-day inpatient alcohol treatment program. Tr. at 37–38. He testified that the Individual complied with all of the Court’s mandates. Tr. at 35, 38–39. During his period of supervised probation, the Individual was also required to “not have any negative interaction[s] with law enforcement” and was required to abstain from alcohol use and to avoid any establishment serving alcohol. Tr. at 41. To monitor this requirement, the Individual was administered breathalyzer tests, which were negative, and a urine test, the results of which had not yet been received. Tr. at 41–43. The CCO indicated that, from his knowledge, the Individual had never visited his office while intoxicated, impaired, or smelling like alcohol. Tr. at 34. He also shared that, if the urinalysis is negative, his office would recommend the Individual for unsupervised probation. Tr. at 44.

#### **B. The Individual’s Testimony Regarding his Criminal Activity and his Failure to Report his Arrest for the July 2022 DUI**

During his hearing testimony, the Individual generally acknowledged having made mistakes and stated he is now trying to “move forward” and stay out of trouble. Tr. at 47–48. Regarding his 2007 DUI, he gave conflicting testimony at first stating he only had “two or three beers” prior to driving and then saying that he did not have anything to drink beforehand. Tr. at 54, 56.<sup>11</sup> He testified that he went for a drive with two passengers, one of whom had brought an open container of alcohol into the car. Tr. at 56–57. He became confused about a road sign, and a police officer then pulled him over after seeing him “[go] through the first [intersection], and then [ ] stop[] at the second one.” Tr. at 56–57.

Regarding the 2018 Disorderly Conduct incident, the Individual admitted that he failed to appear for the court hearing resulting from this arrest. Tr. at 70. When asked why he had not resolved the charges, he testified that he had tried to resolve the matter by phone but had been instructed that he needs to “show up.” Tr. at 71. The Individual offered a litany of excuses for his failure to appear, stating that he has been busy with his work, family, and had been sick. Tr. at 71. He testified that he intends to resolve those charges “as soon as [he] can . . . within the next week or two.” Tr. at 71.

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<sup>10</sup> The Court Compliance Officer reported that there were “not guilty” judgments for the charges of Failure to Give Immediate Notice of Accidents, Failure to Stop Upon Striking Unattended Vehicle, and No Proof of Insurance. Tr. at 36–37.

<sup>11</sup> His written responses to the LOI also indicated that he had consumed “4 12[-]ounce beers in a[n] hour” approximately “30 minutes” prior to the arrest. Ex. 13 at 91. He answered “yes” when asked if he was intoxicated at the time of the arrest. Ex. 13 at 91. When asked at the hearing, however, about whether his blood alcohol content of .08 would suggest that he was drinking prior to driving, he indicated he does not know. Tr. at 56–57.

Regarding the July 23, 2022, DUI, the Individual indicated that he disputed the underlying allegations of the charges, despite his own testimony that he had “blacked out” on the morning of his arrest. Tr. at 75, 99. The Individual admitted he pled guilty to the July 23, 2022, DUI in November 2023. Tr. at 76.

The Individual admitted he knew he was required to report his arrest for the July 23, 2022, DUI. Tr. at 49. The Individual attributed his continuing failure to report the July 23, 2022, DUI to his “emotional state” and because he was “sidetracked” and “kept forgetting[.]” Tr. at 50. The Individual subsequently testified that he “wasn’t going to report it because [he was] being accused of something that [he] didn’t do.” Tr. at 51. He explained that he eventually reported the July 23, 2022, DUI arrest when he reported the January 17, 2023, arrest. Tr. at 50–51. Regarding the January 2023 arrest for Driving While License Revoked, the Individual admitted that after his license had been revoked, he knowingly continued to drive illegally to work. Tr. at 76–78.

### **C. Individual’s Testimony Regarding his Alcohol Use**

The Individual testified that he was required to attend a 28-day inpatient treatment program for alcohol after his first DUI in 2007. Tr. at 80–81. After completion of that program, he attended Alcoholics Anonymous (AA) meetings weekly as a requirement of his probation. Tr. at 81. He testified that he avoided alcohol “for a while” but eventually “violated probation” and was sent back to jail. Tr. at 82. After his release, he avoided alcohol and completed his probation. Tr. at 82. The Individual testified he stayed sober for “six or seven years” until 2017 when he “fell off the wagon” because his then girlfriend had broken up with him. Tr. at 82–83. He claimed he was not drinking heavily but rather “just . . . every now and then . . . .” Tr. at 83.

The Individual testified that after his July 23, 2022, DUI, his employer required him to undergo a FFDE, which required him to complete a six-week class and attend twelve outpatient treatment sessions over ninety days.<sup>12</sup> Tr. at 83–85. The Individual claimed that both programs taught him to better identify his triggers – namely, conflicts with his girlfriend – and that he now works through his triggers by communicating with her and by engaging in hobbies such as his team sport. Tr. at 83–85. The Individual admitted that he was expected to remain abstinent during the FFDE, but relapsed “three or four times.” Tr. at 91. He further admitted to consuming alcohol one or two months prior to the hearing. Tr. at 91.

When asked about the treatment recommendations of the Psychologist, the Individual acknowledged that he had read them, yet admitted that he (1) has only maintained his sobriety for “almost a month-and-a-half-now,” (2) did not enroll himself in an IOP, and (3) had not undergone monthly PEth testing or alcohol testing of any sort after receiving the Psychologist’s Report. Tr. at 93–94. The Individual, however, claimed that he does not have an alcohol problem. Tr. at 97. He indicated that he has discontinued individual counseling. Tr. at 95.

### **D. Psychologist’s Testimony Regarding the Individual’s Alcohol Use**

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<sup>12</sup> The outpatient treatment program also served to fulfill the court-mandated treatment required as a term of his probation for the July 23, 2022, DUI. Tr. at 86–87.

The Psychologist testified after observing the other witnesses' testimony. The Psychologist re-explained the criteria used in making his diagnosis of AUD, Severe. Tr. at 103–04. Regarding his PAI, the Psychologist noted that the Individual was “still acknowledging significant alcohol problems” despite “trying to present a favorable impression.” Tr. at 105–06. He also opined that the Individual's purported prior abstinence in the FFDE was undermined by the Individual's admission that he had consumed alcohol during the FFDE. Tr. at 106.

The Psychologist explained that he recommended that the Individual attend an IOP to “address[ ] this really consistent, long-term history of alcohol use, especially in [the Individual's] reported case, where he's drinking to address emotional distress and conflict in his relationships.” Tr. at 107. The Psychologist opined that the outpatient treatment programs attended by the Individual were of insufficient intensity to meet his recommendation that the Individual attend an IOP, explaining that an adequate IOP would involve “a minimum of nine hours a week, usually in three-hour sessions, for at least 12 to 16 weeks, with both group and individual components” which would provide the Individual “with more opportunity to” address his triggers. Tr. at 106–07. Regarding his recommendation for a year of aftercare support, the Psychologist explained its importance in continuing to provide support when the Individual is “thinking about drinking” or distressed. Tr. at 107. He opined that the treatment received by the Individual had not been effective, noting that “although [the Individual] report[s] that he's learned what his triggers are, he's not done anything . . . differently about those triggers.” Tr. at 107

Regarding the Individual's testimony, the Psychologist found that the Individual's self-reported improvement in communication with his romantic partner and alleged reduction in alcohol consumption were positive developments. Tr. at 108. However, the Psychologist found it concerning that the Individual continues to drink and does not believe he has a problem with alcohol. Tr. at 108. Importantly, he opined that the Individual has not demonstrated reformation or rehabilitation and that his prognosis is poor. Tr. at 108.

## **V. Analysis**

Three themes concerning the Individual stand out in the record, as relevant to the security concerns raised by the LSO. First, he has demonstrated a longstanding inability or unwillingness to comply with rules and the law. Second, he has a significant, longstanding alcohol problem, which he has not successfully addressed. Third, he is a remarkably inconsistent historian.

### **A. Guideline E**

The Individual admitted that he knew of his obligation to report the July 23, 2022, DUI and that he knowingly failed to report, or concealed, the July 23, 2022, DUI. The reasons he gave for the concealment varied, but ultimately he admitted to not reporting the arrest because he felt that he was not guilty of the underlying allegations leading to his arrest, despite his stated awareness that there was no such reporting exception for access authorization applicants. While the Individual eventually reported the July 23, 2022, DUI arrest, he only did so in the context of his reporting of a January 17, 2023, arrest (which itself was reported three days late).



The Adjudicative Guidelines set forth seven conditions that can mitigate security concerns under Guideline E. None of these seven conditions are present in the instant case.

Paragraph 17(a) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that they “made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Adjudicative Guidelines at ¶ 17(a). Given the Individual’s deliberate concealment of the July 23, 2022, DUI over a six-month period, it cannot be said that the Individual made “prompt, good faith efforts” to correct the concealment. Adjudicative Guidelines at ¶ 17(a). Accordingly, the first mitigating factor is not present in the instant case.

Paragraph 17(b) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that 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.

Adjudicative Guidelines at ¶ 17(b). In the present case, there is no indication that the Individual was legally or professionally advised to avoid complying with DOE’s reporting requirements. Accordingly, the second mitigating factor is not present in the instant case.

Paragraph 17(c) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that 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.” Adjudicative Guidelines at ¶ 17(c). In the present case, the concealment of the July 23, 2022, DUI casts significant doubt on the Individual’s current “reliability, trustworthiness, [and] good judgment.” The Individual admits he knew that he was required report the July 23, 2022, DUI and offered multiple unpersuasive excuses for his six-month concealment. The most unconvincing excuse – that he did not believe he committed the underlying acts – creates further and continuing doubts about his reliability, trustworthiness, and judgment. Accordingly, the third mitigating factor is not present in the instant case.

Paragraph 17(d) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that he 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.” Adjudicative Guidelines at ¶ 17(d). In the present case, the Individual, to an extent, has acknowledged the behavior insofar as he eventually reported the July 23, 2022, DUI. Additionally, as discussed above, he has taken some positive steps to change a stressor, problematic alcohol use, that contributed to his behavior. However, the Individual still uses alcohol, so that stressor remains unalleviated. Moreover, there is no evidence in the record indicating that he has received counseling specifically for his recidivism, which has not always

involved alcohol. Accordingly, I am not convinced that his untrustworthy and unreliable behavior is unlikely to recur, as the Individual has continued to drink in violation of the terms of his probation and was arrested again in 2023. His lack of candor during the hearing creates continuing doubts as to his ability to refrain from untrustworthy, unreliable, or other inappropriate behavior, and it cannot be said that the Individual would not conceal information in the future. Accordingly, the fourth mitigating factor is inapplicable.

Paragraph 17(e) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that he “has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” Adjudicative Guidelines at ¶ 17(e). In the present case, the LSO has not alleged that the Individual is subject to exploitation, manipulation, or duress. Accordingly, the fifth mitigating factor is not present in the instant case.

Paragraph 17(f) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that the derogatory “information was unsubstantiated or from a source of questionable reliability.” Adjudicative Guidelines at ¶ 17(f). In the present case, the Individual admits he failed to report this arrest in a timely manner. Accordingly, the sixth mitigating factor is not present in the instant case.

Paragraph 17(g) provides that security concerns raised under Guideline E can be mitigated when the individual has shown that his 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(g). In the present case, the record does not indicate in any way that the security concerns asserted by the LSO arose from an association with the criminal element. Accordingly, the seventh mitigating factor is not present in the instant case.

I therefore find that the Individual has not sufficiently established the presence of any of the seven mitigating conditions set forth at Guideline E. Accordingly, I find that he has not resolved the security concerns raised under Guideline E.

## **B. Guideline G**

The Individual has a longstanding history of problematic alcohol use, often leading to criminal activity, which has not been amenable to treatment. This history has led the Psychologist to credibly conclude the Individual met sufficient criteria for AUD, Severe, set forth in the DSM-5-TR. The Individual has not substantially complied with the Psychologist’s treatment recommendations or effectively addressed his AUD, Severe, in another manner. Since the Individual has continued to use alcohol until very recently, he has neither been reformed nor rehabilitated from his AUD, Severe.

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns under Guideline G. None of these four conditions are present in the instant case.

Paragraph 23(a) provides that security concerns raised under Guideline G can be mitigated when the individual has shown that “[s]o 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.” Adjudicative Guidelines at ¶ 23(a). In the present case, the Individual admitted using alcohol as recently as a month and a half before the hearing, in violation of his probation. Moreover, the Individual has a long history of returning to alcohol use after receiving treatment and temporarily maintaining sobriety. I therefore conclude that not enough time has passed since the Individual's last use of alcohol, and that his long history of problematic alcohol use shows that his problematic alcohol use is not an unusual occurrence for him and is likely to recur. Moreover, the Individual's recent conduct which includes his recent use of alcohol and failure to acknowledge his alcohol problem casts doubt on his current reliability, trustworthiness, and judgment. Accordingly, the first mitigating factor is not present in the instant case.

Paragraph 23(b) provides that security concerns raised under Guideline G can be mitigated when the individual has shown that they acknowledge their “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.” Adjudicative Guidelines at ¶ 23(b). The Individual testified that he does not have a problem with alcohol despite his documented history of maladaptive alcohol use. Moreover, he has not demonstrated a clear and established pattern of abstinence as recommended by the Psychologist and as required by the terms of his probation. Accordingly, the second mitigating factor is not present in the instant case.

Paragraph 23(c) provides that security concerns raised under Guideline G can be mitigated when 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.” Adjudicative Guidelines at ¶ 23(c). The Individual has testified to a recurrent history of treatment and relapse, having participated in court-ordered treatment after his 2007 and 2022 DUIs and continuing to drink during and after both programs. Accordingly, the third mitigating factor is not present in the instant case.

Paragraph 23(d) provides that security concerns raised under Guideline G can be mitigated when the “individual has successfully completed a treatment program along with any required aftercare and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(d). While the Individual has completed several treatment programs, they have clearly not been successfully completed since he has not been able to demonstrate a clear and established pattern of abstinence in accordance with his recent treatment recommendations. Accordingly, the fourth mitigating factor is not present in the instant case.

I therefore find that the Individual has not sufficiently established the presence of any of the four mitigating conditions set forth at Guideline G. Accordingly, I find that he has not resolved the security concerns raised under Guideline G.

### **C. Guideline J**

The Individual has an extensive criminal history of nine arrests and citations occurring between 2007 and 2023. During this period, the Individual exhibited a flagrant disregard for the law. The terms of conditional release, the terms of his probation, and the threat of incarceration acted as no deterrent to the Individual's continued alcohol use and engagement in criminal activity. For example, despite testimony from his CCO that he has complied with the requirements of his probation and may be referred for unsupervised probation, the Individual admits that he illegally drove after his July 23, 2022, DUI, violated the terms of his conditional release by continuing to consume alcohol, and violated the terms of his probation by continuing to drink up to a month and a half before the hearing. The Individual has repeatedly failed to appear in court. This lack of accountability is a pattern: (1) he failed to address a 2007 traffic citation, a 2012 warrant was issued, and he was arrested due to that warrant in 2022 when pulled over for speeding; (2) he failed to address a 2013 speeding citation, a warrant was issued, and he was arrested in 2016; and (3) when he saw the police during the 2018 Aggravated Battery incident, he testified to taking off.<sup>13</sup>

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns under Guideline J. None of these four conditions are present in the instant case.

Paragraph 32(a) provides that security concerns raised under Guideline J can be mitigated when the individual has shown that “[s]o 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.” Adjudicative Guidelines at ¶ 32(a). In the present case, the frequency of the criminal activity, the short amount of time since the 2023 arrest, and the Individual’s recent violation of the terms of his probation show that not enough time has elapsed to mitigate the security concerns raised by his criminal activity, that the criminal behavior did not occur under unusual circumstances, and that his criminal behavior is likely to recur. Furthermore, as explained above, the Individual’s lack of accountability for violating the terms of his probation, and the frequency and continuing nature of these violations, reflect a lack of current reliability, trustworthiness, and good judgment. Accordingly, the first mitigating factor is not present in the instant case.

Paragraph 32(b) provides that security concerns raised under Guideline J can be mitigated when the individual has shown that “[t]he individual was pressured or coerced into committing the act and those pressures are no longer present in the person’s life.” Adjudicative Guidelines at ¶ 32(b). In the present case, the Individual does not allege that he was pressured into any of the criminal conduct discussed above. Accordingly, the second mitigating factor is not present in the instant case.

Paragraph 32(c) provides that security concerns raised under Guideline J can be mitigated when the individual has shown that there is no “reliable evidence to support that the individual committed the offense.” Adjudicative Guidelines at ¶ 32(c). While the Individual contends that he did not commit the July 23, 2022, DUI and to some extent disputes the 2019 and 2020 traffic citations, it cannot be said that there is no reliable evidence that he committed those offenses. The Individual pled guilty to the July 23, 2022, DUI.. Furthermore, the Individual admitted to

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<sup>13</sup> The Individual is unsure if he paid the 2019 speeding citation and disputes that he was issued a 2020 traffic citation. Tr. at 62–64. Regardless, the background investigation had indicated that neither were paid and that a warrant had been issued regarding the 2020 citation.

committing six other crimes. Accordingly, the third mitigating factor is not present in the instant case.

Paragraph 32(d) provides that security concerns raised under Guideline J can be mitigated when the individual has shown that 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(d). In the present case, there is some ultimately unconvincing evidence of rehabilitation, including completion of the FFDE and outpatient treatment program and his one and a half months of abstinence. However, the Individual has a long history of failing to take accountability. Furthermore, despite pleading guilty, he continues to deny any accountability for the July 23, 2022, DUI charges. The Individual also continued driving illegally for six months after his license had been revoked. The Individual was specifically ordered by a court to refrain from drinking alcohol during his conditional release and probation. However, the Individual admitted to drinking during both periods despite participating in the EAP programming and his outpatient treatment program. Taken together, it cannot be said that this is evidence of “successful rehabilitation” as required by the fourth mitigating factor. Accordingly, the fourth mitigating factor is not present in the instant case.

I therefore find that the Individual has not sufficiently established the presence of any of the four mitigating conditions set forth at Guideline J. Accordingly, I find that he has not resolved the security concerns raised under Guideline J.

## **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, I find that the Individual has not brought forth sufficient evidence to resolve each of the security concerns raised under Guidelines E, G, and J. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, Individual should not be granted a security clearance. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals