United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)		
	)		
Filing Date: August 6, 2024	)	Case No.:	PSH-24-0168
	)		
	)		

Issued: November 26, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."[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 with a DOE contractor in a position that requires him to hold an access authorization. In October 2022, the Individual was hospitalized due to "several episodes of vomiting" after "binge drinking" for approximately one week. Exhibit (Ex.) 9 at 6. Medical notes indicate that the Individual had "a history of alcohol abuse[,]" and he was "counseled on his alcohol use" prior to discharge. *Id.* The Individual was diagnosed with alcoholic ketoacidosis and withdrawal. *Id.* at 9. In August 2023, the Individual presented to the hospital with vomiting due to alcohol consumption, and again, was discharged with a diagnosis of alcoholic ketoacidosis and withdrawal. Ex. 12 at 12.

In a memorandum that was compiled after his August 2023 hospitalization, the Individual's supervisor noted that he had observed that the Individual was likely "under the influence of drugs or alcohol" while he was at work in mid-August 2023. Ex. 15 at 1. The supervisor subsequently maintained near daily discussions with the Individual regarding his alcohol use the remainder of the month and into early September 2023. *Id.* at 1–2; Ex. Z. The Individual's supervisor believed that the Individual "was displaying signs of an alcohol problem." Ex. 15 at 2. In late August 2023,

[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.

the Individual's supervisory team also received reports "concern[ing] . . . the smell of alcohol on [the Individual's] breath at work [.]" *Id*. The Individual was encouraged to engage his employer's Employee Assistance Program (EAP), and the Individual's supervisor reported the alcohol-related concerns to DOE in September 2023. *Id.*; Ex. 13 at 1–2. The Local Security Office (LSO) subsequently asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual signed and submitted in September 2023. Ex. 14. As questions remained, the LSO asked the Individual to complete a second LOI, which the Individual signed and submitted in October 2023. Ex. 12.

In December 2023, one of the Individual's coworkers reported to DOE that in late November 2023, he "smelled the odor of alcohol" on the Individual and "could tell that [the Individual] was indeed still drunk" while at work. Ex. 10 at 2. The coworker also reported that previously, "[the Individual] stopped and exhaled in [the coworker's] face and asked if his breath stunk of alcohol." *Id.* Also in December 2023, the Individual's "Group Head" and supervisor counseled the Individual regarding alcohol use-related matters. Ex. 11 at 1; Ex. AA.

In April 2024, the LSO asked the Individual to undergo a psychological evaluation with a DOE-consultant psychiatrist (DOE Psychiatrist). Ex. 7. The DOE Psychiatrist issued a report (the Report) of his findings the same month, and in the Report, he diagnosed the Individual with Alcohol Use Disorder (AUD), Severe, as set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision* (DSM-5-TR). *Id.* at 16. The DOE Psychiatrist also stated that "at least through late fall 2023, [the Individual] both habitually drank to the point of impaired judgment and binge-drank on a daily basis." *Id.* The DOE Psychiatrist did not find any evidence of rehabilitation or reformation. *Id.*

The LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines G (Alcohol Consumption) and E (Personal Conduct) of the Adjudicative Guidelines. Ex. 2. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of his Group Head, a licensed psychologist engaged by the Individual for an evaluation (Individual's Expert), his Alcoholics Anonymous (AA) Sponsor, and a fellow AA attendee. *See* Transcript of Hearing, OHA Case No. PSH-24-0168 (hereinafter cited as "Tr."). The Individual also submitted 45 exhibits, marked Exhibits A through SS. The DOE Counsel submitted fifteen exhibits marked as Exhibits 1 through 15 and presented the testimony of the DOE Psychiatrist.

II. Notification Letter

A. 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 at work, such as reporting for duty in an intoxicated or impaired condition[,]" "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[,]" "diagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[,]" and "the failure to follow treatment advice once diagnosed[.]" *Id.* at ¶ 22(b)–(e). Under Guideline G, the LSO alleged that:

1. The DOE Psychiatrist diagnosed the Individual with AUD, Severe, without adequate evidence of rehabilitation or reformation. Ex. 2 at 4.

2. The Report indicates that the Individual "continues to keep alcohol in his home, [and] has continued to drink . . . against the repeated medical advice of healthcare professionals[.]" *Id.* The Report notes that the Individual continues to consume alcohol despite "simultaneously expressing a desire to quit" and "knowing it could impact his security clearance and employment[.]" *Id.* The DOE Psychiatrist concluded that the Individual "has no recovery resources in place, has no intentions of seeking treatment for his drinking, and has not ruled out the possibility of resumed consumption of [liquor]." *Id.*

3. The DOE Psychiatrist made a series of recommendations in the Report for the Individual to show adequate evidence of rehabilitation or reformation, and the LSO asserts that the Individual has not fulfilled those recommendations. *Id.* at 4–5.

4. The DOE Psychiatrist concluded that "at least through late fall 2023, [the Individual] habitually drank to the point of impaired judgment and binge-drank on a daily basis." *Id.*

5. October 2022 medical records indicate that the Individual "has a history of alcohol abuse[,]" and that the Individual "was consuming a fifth of [liquor] every day." *Id.* He was "diagnosed with alcoholic ketoacidosis and alcohol withdrawal." *Id.*

6. The Individual never filled prescription medication for his alcohol consumption. *Id.*

7. In August 2023, the Individual was taken to the hospital and treated for alcoholism and mild withdrawal symptoms. *Id.* Although he was counseled to stop drinking, the Individual "continued to regularly consume alcohol[.]" *Id.*

8. In October 2022, the Individual was "diagnosed with alcoholic ketoacidosis and alcohol withdrawal with a recommendation to quit using alcohol." *Id.* at 5–6. The Individual "continued to regularly consume alcohol[.]" *Id.* at 6.

9. The Individual "disclosed [to the DOE Psychiatrist and in the September 2023 LOI response] that throughout the 2010s[,] and continuing through September 2023, he would

typically drink approximately eight (8) to ten (10) ounces of [liquor] on a nightly basis" during the weekdays and approximately triple this amount on the weekends. *Id.* In September 2023, the Individual started to "cut back" by consuming five ounces of liquor per night. *Id.* The Individual reported that, since February 2024, his nightly alcohol consumption consisted of one or two twelve-ounce beers on the weeknights and approximately double this amount on Friday and Saturday nights. *Id.*

10. Per a December 2023 Personnel Security Information Report (PSIR), a coworker reported that in late November 2023, the Individual "appeared to be drunk" and previously, "[the Individual] had . . . exhaled into [his] face, asking if his breath stunk of alcohol." *Id.* He reported that the Individual "is known in the office to have an issue with drinking, and that [the Individual]'s issue with drinking may be severely affecting his work." *Id.*

11. In late November 2023, the Individual was counseled on "repeated tardiness and his use of unscheduled leave."[2] *Id.* The Individual was also notified that a coworker recently reported having smelled alcohol on his "breath and person." *Id.* "During the psychiatric evaluation, [the Individual] acknowledged that his drinking has caused him to arrive late to work[.]" *Id.*

12. In August 2023, the Individual was counseled after his supervisor observed that he had "labored speech and difficulty mentally putting a sentence together." *Id.* at 6–7. The Individual "was instructed to seek medical attention and not come to work." *Id.* at 7. The supervisor felt that the Individual "was displaying signs of an alcohol problem." *Id.*

13. The Individual reported to the DOE Psychiatrist that he "has experienced approximately [ten] alcohol-related falls within the last few years and indicated he would often think about drinking while driving home from work." *Id.*

14. The Individual was "hospitalized . . . three (3) times within the last five (5) years[.]" *Id.*

    (a) In August 2023, the Individual was hospitalized and treated for alcoholism and withdrawal symptoms. *Id.* He told medical personnel that he would he "sit down and drink alcohol for three (3) or four (4) hours." *Id.*

    (b) In October 2022, the Individual was hospitalized following "episodes of vomiting caused by alcohol intoxication/withdrawal and starvation." *Id.* The Individual was "counseled on his alcohol use but said he did not feel he had any problems[.]" *Id.*

    (c) October 2022 medical records indicate that the Individual had previous treatment "for alcohol withdrawal in August 2021[,]" and "was noted to have acute renal insufficiency due to dehydration from vomiting related to his alcohol use." *Id.*

15. The Individual reported to the DOE Psychiatrist that "on four (4) or five (5) occasions he has been 'blackout drunk' and that his alcohol use has often made it difficult for him to get

[2] SSC alleges that the counseling was in November 2023, but the corresponding memorandum is dated December 2023. Ex. 11 at 1.

out of bed in the mornings, particularly Mondays." *Id.* He further "reported that his hangovers on Mondays would sometimes last into the afternoon." *Id.*

The LSO's invocation of Guideline G is justified.

B. 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is "[d]eliberately providing false or misleading information; or concealing or omitting information concerning relevant facts to a[] . . . medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination[.]" *Id.* at ¶ 16(b).

Under Guideline E, the LSO alleged that:

1. Despite telling the DOE Psychiatrist that he "switched from drinking [liquor] to beer in late 2023 or early 2024, and that his goal going forward is to not drink at all," the Individual also reported that "he may go to the liquor store and buy a hip flask of [liquor] just to see what it means to him" if his access authorization is restored. Ex. 2 at 8.

2. The Individual reported to the DOE Psychiatrist that "he never considered himself to be in need of treatment for his drinking or to have an alcohol-based medical condition." *Id.* However, October 2022 medical records indicate that the Individual "expressed interest in getting resources on alcohol rehabilitation and discussed medical treatment for alcohol use disorder." *Id.* at 8–9.

3. In submitting to alcohol testing at the behest of the DOE Psychiatrist, the Individual reported that "he was unable to complete the test that day due to an issue with the form and the system not working properly." *Id.* at 9. A representative from the laboratory later stated that "there was no issue with their system, but that [the Individual] claimed he only needed a blood draw and left the facility before the urine sample could be completed." *Id.*

4. The Individual reported to the DOE Psychiatrist that he was never "advised by anyone at work to cut back on his drinking, or to stop drinking." *Id.* However, the Individual was "formally counseled twice by his employer and referred to seek EAP services due to concerns regarding his alcohol consumption." *Id.*

5. In his September 2023 LOI response, the Individual "stated he never reported to work with a hangover or under the influence of alcohol." *Id.* However, the Individual reported to the DOE Psychiatrist that his "hangovers on Mondays would sometimes last into the afternoon[,]" and "there were a lot of Mondays where he drank too much but did not call off work." *Id.* The Individual also stated that there were "other days of the workweek where he would awaken, feel hungover or still intoxicated, but he would go to work anyway." *Id.*

The LSO's invocation of Guideline E is justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

As indicated above, the Individual sought medical attention in October 2022 following an episode of binge drinking.[3] Ex. 9 at 6. The week prior, the Individual consumed a fifth of liquor every day.[4] *Id.* As a result, the Individual "presented with nausea, and several episodes of vomiting[.]" *Id.* The medical records note that the Individual was consuming alcohol without eating, and that the documented "electrolyte abnormalities were likely in setting of alcohol intoxication/withdrawal and starvation." *Id.* The Individual was "counseled on his alcohol use but said he [did not] feel like he had any problems with drinking." *Id.* at 6. He was diagnosed with, among other things, alcoholic ketoacidosis and alcohol withdrawal. *Id.* at 9.

The Individual was transported by EMS to a hospital in early August 2023 after complaining of alcohol withdrawal symptoms, vomiting, and nausea. Ex. 9 at 43, 45; Ex. 12 at 9, 12. He disclosed to medical personnel that that he would drink until around 9 o'clock pm after getting home from work between five and six o'clock in the evening. Ex. 9 at 43; Ex. 12 at 11. Prior to discharge, the

[3] The medical records from this visit indicate that the Individual "has a history of alcohol abuse" and that he had previously been hospitalized for alcohol withdrawal symptoms in August 2021. Ex. 9 at 6.

[4] Medical notes indicate that the Individual also told the provider that he had been consuming "[one] handle [of liquor] per day" the week prior to his admission. Ex. 9 at 19. Records state that he was "interested in getting resources on alcohol rehab" and "treatment for alcohol use disorder[.]" *Id.* at 11.

Individual was "[c]ounseled extensively to stop drinking alcohol." Ex. 9 at 43; Ex. 12 at 10. He was diagnosed with, among other things, alcoholic ketoacidosis and alcohol withdrawal symptoms. Ex. 9 at 45.

The Individual's direct managers "maintain[ed] a daily check-in with [the Individual]" following the August 2023 hospitalization. Ex. 15 at 1. During a mid-August 2023 check-in, the Individual's supervisor observed that the Individual's speech was "labored[,] and he was having difficulty mentally putting together a sentence." *Id.*; Ex. Z. He felt that the Individual was "either tired, or under the influence of drugs or alcohol." Ex. 15 at 1. Accordingly, he instructed the Individual "to seek medical attention[.]" *Id.* In a follow-up conversation with the Individual, the supervisor and the Individual discussed the Individual's alcohol consumption. *Id.* The supervisor later advised the Individual that, based on the supervisor's experience as a Drug and Alcohol Program Advisor, the Individual "was displaying signs of an alcohol problem." *Id.* at 2.

In the September LOI response, the Individual reported that he drank approximately eight to ten ounces of liquor each night after work. Ex. 14 at 1–2. The Individual denied having ever reported to work "with a hangover." *Id.* at 3.

The Individual attended six EAP counseling sessions between September and November 2023. Ex. 9 at 66. During the final session, the EAP counselor observed that the Individual "appeared to be impaired." *Id.* The EAP counselor further reported that the Individual continued to drink "[eight] ounces of liquor per night" and "d[id] not want to abstain from alcohol." *Id.* A December 2023 PSIR indicates that in November 2023, one of the Individual's coworkers took notice of the fact that the Individual was "unusual[ly] joking/giddy" and surmised that the Individual was "still drunk[.]" Ex. 10 at 2. Further, on a separate occasion, the Individual "exhaled" in the same coworker's face and "asked if his breath stunk of alcohol." *Id.* A December 2023 memorandum of employee counseling indicates that the Individual's Group Head and supervisor expressed concerns regarding the Individual's "repeated tardiness and use of unscheduled leave." Ex. 11 at 1. The memorandum also indicates that the smell of alcohol was detected on the Individual's breath on the day after Thanksgiving, and the Individual's Group Head and supervisor recommended that the Individual avail himself of EAP services. *Id.*

As noted previously, the Individual met with the DOE Psychiatrist for a psychiatric evaluation in April 2024. Ex. 7. During the evaluation, the Individual reported that his drinking "'steadily ramp[ed] up' from about 2010 through 2016 or 2017, at which time his drinking peaked," and either "remained the same or decreased very slightly" through September 2023.[5] *Id.* at 3. Throughout this time, the Individual stated that "he would typically drink approximately [eight] ounces of [liquor] . . . on worknights on a nightly basis[.]" *Id.* Occasionally, if the Individual was staying up later, he might consume an additional "portion of a second [eight-ounce] mug" of liquor. *Id.* The Individual also reported that on weekends or days on which he did not have to work the

[5] The Individual told the DOE Psychiatrist that his consumption increased because his coworkers and wife would consume similar amounts of alcohol. Ex. 7 at 3; Tr. at 149–53, 156–57. The Individual stated that his office culture was such that it was unproblematic to consume alcohol during the workday while at lunch, which he had done in the past. Tr. at 149–50, 152. That permissive office culture has since ended. *Id.* at 153–55.

following day, he "might consume [three] or [four] [eight]-ounce mugs of [liquor]."[6] *Id.* at 4. The Individual told the DOE Psychiatrist that he had been "blackout drunk" on four or five occasions, that his alcohol consumption caused him some difficulty getting out of bed, and that "his hangovers on Mondays would sometimes last into the afternoon." *Id.* at 7. The Individual also experienced "approximately [ten] alcohol-related falls," causing him injury. *Id.* Further, the Individual stated "that he would often think about drinking while driving home from work but denied other indications of craving." *Id.* The Individual admitted to the DOE Psychiatrist that "within the last couple of years," his alcohol consumption caused him to arrive to work late, "sometimes by as much as [one-and-a-half] hours," causing his employer to counsel him regarding the matter. *Id.* at 8. The Individual also told the DOE Psychiatrist that he had been prescribed medication "related to his drinking," but never filled the prescription and "[did not] take it seriously."[7] *Id.* at 6.

During the psychiatric evaluation, the Individual acknowledged that "he had apparently gone into work . . . while still intoxicated on multiple occasions[.]" *Id.* at 8. The Individual "denied ever being advised by anyone at work to cut back on his drinking or to stop drinking[.]" *Id.* at 10.

The Individual represented to the DOE Psychiatrist that, starting in September 2023, "he was predominantly limiting his liquor consumption to [five] ounces . . . per night." *Id.* He further stated that "around New Year's 2024, he decided to quit drinking [liquor] entirely" and "instead transitioned at that time to drinking beer . . . with a goal at that time of 'ideally [being] completely alcohol-free by around June [2024].'"[8] *Id.* at 4–5. The Individual reported that since approximately mid-February 2024, he typically consumed between one and two twelve-ounce beers per night. *Id.* at 5. In the thirty days preceding the psychiatric evaluation, the Individual "reported drinking approximately [one] beer . . . on a daily basis, [and] drinking about [twenty-four to twenty-eight] ounces of beer on Friday and Saturday nights[.]" *Id.* He also refrained from drinking alcohol entirely in the three or four days prior to the evaluation.[9] *Id.* at 5, 10. During the evaluation, the Individual explained that should these proceedings be "adjudicated favorably," he may purchase a "hip flask of [liquor] just to see what it means to [him]."[10] *Id.*

---

[6] The Individual told the DOE Psychiatrist that "beginning around the mid-2010s, [he] began to make efforts to refrain from drinking on Sundays until around 7:30 p.m., in an effort to avoid drinking to the point of needing to call off from work the next morning due to persistent intoxication or hangover, which was reportedly regularly occurring." Ex. 7 at 4.

[7] At the hearing, the Individual testified that he "[does not] want to rely on drugs like that." Tr. at 164–65.

[8] The October 2024 Report compiled by the Individual's Expert indicates that the Individual first reduced his liquor consumption to two ounces per day before making the switch to beer "around Christmas[.]" Ex. T at 2. At the hearing, the Individual explained that he gradually reduced his beer consumption, so "it [was not] all that hard to quit." Tr. at 173–74.

[9] This coincides with the Individual's testimony that he last consumed alcohol on March 31, 2024, approximately seven months prior to the hearing. Tr. at 93.

[10] The Individual testified regarding this statement, indicating he "[does not] know that [he] ever had an intention to start drinking again." Tr. at 168.

In conjunction with the evaluation, the Individual underwent a phosphatidylethanol (PEth) test, which "assesses for the consumption of moderate amounts of alcohol over the preceding [three] weeks[']s time." *Id.* at 11. The result of the Individual's PEth test was negative, which the DOE Psychiatrist concluded was consistent with the Individual's statements regarding his current alcohol consumption of "slightly over one standard drink per day." *Id.*

The DOE Psychiatrist also concluded that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Severe, "with the condition remaining present to date and not in remission." *Id.* at 16. Further, "at least through late fall 2023," the Individual "habitually drank to the point of impaired judgment and binge-drank on a daily basis." *Id.* The DOE Psychiatrist opined that the Individual had not shown adequate evidence of rehabilitation or reformation because the Individual "continues to keep alcohol in his home, [and] has continued to drink (including on a daily basis) against the repeated medical advice of healthcare providers[.]" *Id.* Further, the DOE Psychiatrist observed that the Individual continued to drink despite the risk it posed to his access authorization and employment, and that he continued to drink despite expressing the desire to discontinue alcohol consumption. *Id.* The Individual also did not have any "recovery resources in place, ha[d] no intentions of seeking treatment for his drinking, and ha[d] not ruled out the possibility of resum[ing] consumption of [liquor]." *Id.*

The DOE Psychiatrist recommended that the Individual remain abstinent for a minimum of twelve months, participate in a four-to-six-week intensive outpatient program (IOP), participate in AA three times per week for twelve months, and "work[] the [Twelve] Steps with a sponsor." *Id.* at 16–17. The DOE Psychiatrist also recommended that the Individual participate in a weekly aftercare program for a minimum of six months, utilize his employer's EAP if he remains employed, submit to random and frequent blood alcohol content (BAC) tests, and undergo an additional two PEth tests. *Id.* at 17.

Per the DOE Psychiatrist's instructions, the Individual was not only asked to submit to a PEth test, but also, an Ethyl Glucuronide (EtG) test.[11] Following the psychiatric evaluation, the Individual called the DOE Psychiatrist's office to state that the lab order form for EtG testing "was not accepted" by the laboratory and accordingly, the Individual was not able to "complete the required testing." Ex. 7 at 10. An April 10, 2024, email from a laboratory technician, indicates that the Individual presented at the testing site, and told the technician that he "only needed a blood draw." Ex. 8 at 1. The email went on to state that "[t]he authorization form the [Individual] presented . . . required more than a blood collection." *Id.* It also indicated that the Individual "left the facility before the [urine] collection could be completed." *Id.* The Individual testified that he had been told that the test required supervision and was asked to wait for an available technician. Tr. at 116. After waiting for some time, the Individual told a technician that he had a doctor's appointment that he needed to attend and stated that he would "be right back." *Id.* The Individual left the facility and returned after his appointment. *Id.* at 116–17. Upon his return, he could not understand what the technician was trying to communicate to him regarding the order form and attempted to call the DOE Psychiatrist's office for assistance but could only leave a message. *Id.* at 117–18. When he did not receive a return call and the technician could not assist him, the Individual left without having taken the test. *Id.* at 118.

[11] EtG tests assess "for the consumption of any amount of alcohol within the preceding [one]-to-[five]-day time period." Ex. 7 at 11.

The Individual began attending AA in early July 2024, secured his current Sponsor in September 2024, is currently working Step Three of the Twelve Steps of the AA program, and is collecting sobriety coins. Ex. T at 2; Ex. F; Ex. G; Ex. Y; Ex. CC; Ex. DD; Ex. II; Ex. LL; Ex. MM; Ex. OO; Tr. at 39–41, 91–93, 184–85, 190. He attends between three to four AA meetings per week. Ex. G; Ex. CC; Ex. II; Ex. MM; Tr. at 101. He also consumes AA audiobooks during his commute and feels comfortable enough with other attendees to call them when in need. Tr. at 102–04.

In late July 2024, the Individual began attending an IOP. Tr. at 95; Ex. BB. As part of the IOP, the Individual attended three, three-hour "mental health and substance use group therapy and education" sessions each week for a total of eight weeks. Ex. BB; Tr. at 95, 123, 131. The Individual completed the program in late September 2024. Ex. BB. While attending the IOP, the Individual was subject to "random drug screenings or breathalyzers[,]" all of which were negative. Ex. BB. Upon completion of the IOP in September 2023, the Individual immediately began attending a therapist-led group outpatient program (OP).[12] Tr. at 97, 129, 132, 188. OP meets for one hour every week. *Id.* at 133, 188.

The Individual has voluntarily submitted to six PEth tests and six EtG tests from July 2024 through November 2024, the results of which have all been negative. Ex. B; Ex. C; Ex. D; Ex. E; Ex. W; Ex. X; Ex. GG; Ex. HH; Ex. RR; Ex. SS.

In September 2024, the Individual engaged the Individual's Expert for a separate evaluation. Ex. T; Ex. U. The Individual's Expert diagnosed the Individual with AUD, in Early Remission, with a good prognosis. Ex. T at 4.During the psychological evaluation with the Individual's Expert, the Individual recounted his history of alcohol consumption, including a "2017 or 2018" incident when "someone complained [that he] smelled of alcohol[,]" resulting in a meeting "with [his] supervisor and head of [Human Resources]." Ex. T at 2. He indicated that he has had good performance evaluations at work,[13] and that "no one said [he] had a problem, until last year[,]" when "[s]omeone reported . . . that [he] smelled of alcohol, appeared giddy [and] drunk." *Id.* The Individual indicated that he does not "miss" alcohol, that he has not experienced any cravings, and that he wants to "stay in AA for the rest of [his] life." *Id.* The Individual's Expert diagnosed him with AUD, in Early Remission, indicated that the Individual "has a very good prognosis[,]" and opined that "there is good reason to believe that he will continue abstinent [sic] as he is committed to the treatment process, to rehabilitation, and he has reformed himself . . . to be someone who lives without alcohol." *Id.* at 4.

At the hearing, the Individual's fellow AA attendee testified that although he no longer shares the same AA "home group" with the Individual, he knows that the Individual continues to attend AA meetings, as he remains in touch with the Individual. Tr. at 12–13. He described the Individual as "engaged" and "involved," and explained that the Individual is taking all the right steps to remain abstinent from alcohol. *Id.* at 15. The AA attendee also explained that the Individual has "deep

[12] The OP requires periodic testing. Tr. at 135–36. The Individual submitted to one such required EtG test in October 2024. Ex. HH. The results of the test were negative. *Id.*

[13] The Individual submitted evidence of various awards, challenge coins, certificates of recognition, and letters of commendation he received from 2008 through 2022. *See* Exs. H–S; Ex. FF.

regret over the situation that he got himself into[]" with regard to his alcohol consumption. *Id.* at 16. He confirmed that should the Individual need to talk to him in the middle of the night, he would be available to answer the call. *Id.* at 19–20. Lastly, he asserted that the Individual is doing more than just going "through the motions" and is taking the matter seriously. *Id.* at 28.

The Individual's AA Sponsor described the Individual as a "serious" man who is "fastidious" about logging his AA attendance. *Id.* at 35. He indicated that the Individual is "doing a good job in accepting that he is an alcoholic" and is "committed to . . . participating as a sober member of [AA]." *Id.* at 36. He stated that the Individual has accepted that he is "powerless over alcohol[,]" and that the Individual is "very serious about his recovery." *Id.* at 42, 44, 49. The Individual's AA Sponsor described having a good relationship with the Individual, one in which they speak regularly at meetings and outside of meetings. *Id.* at 48, 59. Finally, the Individual's AA Sponsor testified to his belief that the Individual does not intend to drink alcohol in the future and intends to remain abstinent and an active member of AA. *Id.* at 60.

The Individual's Group Head confirmed in his testimony that he had conducted a May 2024 counseling session with the Individual, during which he notified the Individual that his issues with tardiness and unscheduled leave had been resolved, and that there were no further reports of alcohol on his breath.[14] *Id.* at 64–66. Because the Group Head had "never personally seen [the Individual]" exhibit a "problem with alcohol" at work and has never had "an issue with [the Individual's] performance[,]" he does not have any concerns about the Individual returning to work. *Id.* at 70–72, 82–83. He testified that the Individual has "always been professional and courteous with both his peers and his customers." *Id.* at 72–73.

At the hearing, when asked about his intentions regarding future alcohol consumption, the Individual stated that he is "not going to drink today, and [he] hope[s he does not] drink tomorrow." *Id.* at 90. The Individual indicated that he last consumed alcohol on March 31, 2024. *Id.* at 93. He only came to the conclusion that he was an "alcoholic" after he began attending AA meetings and had not yet realized that he was an alcoholic at the time he saw the DOE Psychiatrist. *Id.* at 90, 112–14, 175–77. The Individual explained that this ongoing state of "denial" was why he continued to drink despite his hospitalizations. *Id.* at 162–63. However, he knows that he is "an alcoholic right now" and "will be forever." *Id.* at 128. He indicated that when he "enjoyed [drinking], he [could not] control it[,]" and when he "[could not] enjoy [drinking]," he "quit altogether." *Id.* at 167. The Individual testified that he "loves AA[,]" because it offers a "camaraderie [that he did not] know [he] missed." *Id.* at 94. The Individual also confirmed that he continues to attend OP, and he does not "have any plans of stopping." *Id.* at 97, 129, 137–39.

The Individual's wife continues to consume alcohol, and when asked how much alcohol is in the home, the Individual indicated they have a box of wine. *Id.* at 99, 182. The Individual asserted that his wife's alcohol consumption never caused him to crave alcohol. *Id.* at 99–100. He insisted that he "can be exposed to alcohol at any variety of places and not be tempted to drink[,]" and further, he does not drink wine. *Id.* at 100–01. When asked whether his wife has been supportive of his abstinence, the Individual testified that "she [has not] been a hindrance[,]" and that he does not believe "that she really cares [whether he] drink[s] or not." *Id.* at 159. Further, as the Individual's

[14] The accompanying memorandum indicates that the Individual told his Group Head that he had been abstinent from alcohol since March 31, 2024. Ex. A.

wife has a condition that could require some emergency assistance, the Individual remains motivated to remain abstinent, in part, to assist her should the need arise. *Id.* at 160, 193. Finally, outside of his wife, the Individual's support system includes, among others, his current Sponsor, trusted coworkers, and fellow AA attendees. *Id.* at 181–82.

The Individual's Expert, who examined all exhibits submitted by the parties, including the DOE Psychiatrist's report,[15] testified that the Individual "appeared open and honest" during his evaluation. *Id.* at 195–96. The Individual's Expert concluded at the hearing that the Individual has "a very good prognosis[,]" but noted that "[it is] relatively early in [the Individual's] sobriety[.]" *Id.* at 197. He decided on the above prognosis because the Individual is attending AA meetings and is part of "the social network there," he feels better about himself, attends OP, is "more mature[,]" and has a "serious outlook on life." *Id.* at 197–98, 200, 202. The Individual's Expert feels that the Individual "is doing what he needs to maintain his sobriety[,]" and that although there is "a risk" that the Individual may relapse, "[it is] relatively low for [the Individual]," and his wife's consumption "[does not] phase [sic] him." *Id.* at 199–200. Finally, the Individual's Expert felt that the Individual had shown adequate evidence of rehabilitation and reformation. *Id.* at 211.

The DOE Psychiatrist confirmed in his testimony that it is "extremely common" for individuals to "minimize" or "have certain discrepancies arise between what they told people months earlier and what they[]" told the DOE-consultant expert when they are still in denial over their maladaptive alcohol use. *Id.* at 220. He opined that the Individual lives in a home where "he has access to [alcohol twenty-four] hours a day[,]" which is a "risk factor." *Id.* at 221. However, the DOE Psychiatrist agreed with the Individual's Expert that there are positive factors to support the Individual's recovery; namely, his AA attendance, OP attendance, completion of an IOP, and support system. *Id.* at 224–25, 242–43. The DOE Psychiatrist stated that he got the impression that the Individual had not "done a lot of work on the [Twelve Steps] to date." *Id.* at 226. Additionally, the DOE Psychiatrist noted that the "biggest risk factor" for relapse is the fact that the Individual had been abstinent from alcohol for a "short amount of time." *Id.* at 227. He gave the Individual a "good" prognosis but could not conclude that the Individual had shown adequate evidence of rehabilitation or reformation, "[m]erely based on the duration of the modified behavior and treatment measures." *Id.* at 242–43. The DOE Psychiatrist noted that "the likelihood of relapse remains appreciable and significantly higher through the first year of sobriety." *Id.* at 243.

V. Analysis

A. Guideline G

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

> (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

[15] The Individual's Expert did not find the DOE Psychiatrist's diagnosis or recommendations inappropriate, but as the Report was compiled in April 2024, he observed that "things ha[d] change[d] since then." Tr. at 207–09.

(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.

While the record indicates that the Individual has taken notable action in addressing his maladaptive alcohol consumption, I cannot conclude that he has mitigated the stated concerns. The Individual completed an IOP and continues to attend weekly OP meetings. He attends AA and is working with a sponsor. According to his testimony, he had about seven months of abstinence at the time of the hearing. The Individual also submitted corroborating evidence for five months of his claimed abstinence in the form of PEth and EtG tests dating back to July 2024. Even if I accept that the Individual has been abstinent for approximately seven months, despite the fact that I only have five months of testing, this period of abstinence and the Individual's positive actions are simply not enough to convince me that the Individual has mitigated the stated concerns in light of the severity of his alcohol misuse.

The Individual's alcohol consumption was extreme and very concerning, resulting in more than one hospitalization, alcohol-related diagnoses, and repeated discussions with his superiors because he was reporting to work under the influence and/or with the odor of alcohol about him. The Individual's Expert, although he acknowledged that "[it is] relatively early in [the Individual's] sobriety[,]" offered a very optimistic prognosis based on his feeling that the Individual has taken appropriate action to address his AUD. Tr. at 197. I cannot accept the DOE Expert's conclusion. Not only has the Individual been abstinent for too little time in the context of the severity and length of his maladaptive alcohol use, but the Individual's spouse also continues to consume alcohol on what appears to be a daily basis. The Individual testified that he believed there was a box of wine in their home at the time of the hearing. When considering how recently the Individual has embarked on his journey of abstinence and the fact that his drinking first increased in part due to his wife's influence, this seems to be a potential temptation for the Individual. The Individual's maladaptive alcohol consumption lasted years, negatively impacted his health and employment, and was spurred in part by the drinking culture within his own home. Although the Individual's treatment and AA participation are positive developments, in the context of the severity of the Individual's alcohol consumption and the years it spanned, seven months of abstinence is simply not enough to demonstrate that the likelihood of relapse is low. Additionally, the Individual's efforts have not yet satisfied the DOE Psychiatrist's recommendations for a full twelve months of abstinence, six months of aftercare, and continued engagement with his employer's EAP.

Regarding mitigating factors (b) and (d), the Individual did acknowledge his maladaptive alcohol use, and he did take action, not only by joining AA, but completing an IOP and attending the OP. However, the Individual has not fully complied with the treatment recommendation from the DOE Psychiatrist that he remain abstinent for a minimum of twelve months, complete six months of aftercare, and participate in programming through his employer's EAP. Therefore, he has failed to mitigate the stated concerns pursuant to mitigating factors (b) and (d).

As the Individual has been abstinent for only seven months and previously engaged in daily consumption of liquor and/or beer for years, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (a). I do not have any information beyond the Individual's testimony regarding the OP meetings or any confirmation from any mental health expert that OP is considered treatment or counseling, and further, I do not have any information from a professional at the facility regarding whether the Individual is making satisfactory progress in OP. And in any event, it is still quite early in the Individual's journey into sobriety, as he has failed to remain abstinent for twelve months, the Individual's risk of relapse remains high. Accordingly, the Individual has failed to mitigate the stated concerns pursuant to mitigating factor (c).

B. Guideline E

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline E include:

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

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

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

(d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

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

Adjudicative Guidelines at ¶ 17.

Regarding the first two Guideline E allegations relating to the Individual's perception of his own alcohol-related problems, or lack thereof, I find that the most important factor to consider is the fact that, as per the Individual's testimony, at the time he made those statements, he did not consider himself an alcoholic. Despite the fact that he had been counseled by his supervisor, that he sought medical treatment for symptoms resulting from his alcohol consumption, and suffered from alcohol-related illnesses, the Individual did not consider himself an alcoholic. As he indicated, it did not occur to him that he was an alcoholic until he began attending AA meetings. It is clear to me that the dissonance between the fact that the Individual was exhibiting symptoms of AUD and how the Individual perceived himself at the time, resulted in the circumstances and events that are outlined in the first two Guideline E concerns. For example, concern two cites the fact that the Individual "never considered himself to be in need of treatment for his drinking or to have an alcohol-based medical condition." Ex. 2 at 8. Naturally, if one does not consider oneself to be an alcoholic, one cannot come to such conclusions about oneself. As the DOE Psychiatrist confirmed in his testimony, it is "common" for individuals in such situations to "minimize" or "have certain discrepancies arise between what they told people months earlier and what they[]" told the DOE-consultant expert when they are still in denial over their maladaptive alcohol use. Tr. at 220. For the foregoing reasons, regarding concerns one and two under Guideline E, I do not believe that the Individual intended to omit any pertinent information regarding his alcohol consumption or mislead the DOE Psychiatrist, and therefore, the conduct did not present a security concern under Guideline E.

Regarding the matter of the EtG test, the third Guideline E concern, based on the information before me, I believe that the Individual was not able to submit to an EtG test due to a series of miscommunications between the Individual and the facility, which was only exacerbated by the fact that the Individual could not get in touch with the DOE Psychiatrist's office. Accordingly, as I do not believe that the Individual meant to mislead the DOE Psychiatrist by failing to submit to an EtG test, I do not believe that the conduct presented a security concern under Guideline E.

However, regarding concerns four and five, at the time the Individual saw the DOE Psychiatrist, he had a history of receiving alcohol-related counseling at work and knew that his alcohol consumption had resulted in professional difficulties. Further, given the Individual's history of alcohol consumption and the admissions he made during the psychological evaluation regarding those matters, the Individual almost certainly was aware of the fact that he would report to work with hangovers at the time he completed the September 2023 LOI. Unlike concerns one and two, the omitted information did not implicate any dissonance between alcohol-related events in the

Individual's life and his perception of self when he was in denial over his alcoholism, as the Individual was asked to report factual information.

I have no information before me that the Individual made prompt or good faith efforts to correct the omissions in concerns four and five, and I have no information before me suggesting that the omissions were based upon the advice of counsel or similar person. Mitigating factors (a) and (b) are not applicable. I cannot conclude that that the omissions are minor, as the Individual was under a direct obligation to tell the truth, but misrepresented facts in the LOI and to the DOE Psychiatrist. In light of my finding above that the Individual has not resolved the alcohol-related security concerns, I also have no assurances that the behavior is unlikely to recur. The Individual has failed to mitigate the concerns pursuant to mitigating factor (c). I have no information before me indicating that the Individual has obtained counseling to address his failure to provide truthful information in the LOI and to the DOE Psychiatrist and therefore, mitigating factor (d) is not applicable. The SCC did not allege that the Individual's conduct placed him at any vulnerability to exploitation, manipulation, or duress, and therefore mitigating factor (e) is not applicable. The Individual did not allege that the information came from a source of questionable reliability, and therefore, mitigating (f) is not applicable. And finally, the SSC did not allege any association with persons involved in criminal activities, and accordingly, mitigating factor (g) is not applicable. Therefore, the Individual has failed to mitigate the fourth and fifth concerns above under Guideline E.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and E of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the Guideline G and E concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals