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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: September 17, 2024)
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_____)

Case No.: PSH-24-0192

Issued: February 10, 2025

Administrative Judge Decision

Diane L. Miles, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for 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.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. Derogatory information was discovered regarding the Individual’s financial history, alcohol consumption, criminal conduct, and handling of protected information. In January 2024, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual, which sought details about his finances, alcohol consumption, and criminal conduct. Exhibit (Ex.) 10. In February 2024, the LSO issued a second LOI, which sought details about the Individual’s history of gambling at casinos. Ex. 11. Due to security concerns raised by the Individual’s LOI responses, the LSO referred the Individual for an evaluation by a DOE-contractor psychologist (Psychologist), who conducted a clinical interview of the Individual in April 2024 and issued a report (the Report) of his findings in May 2024. Ex. 13. The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to continue holding a DOE 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO

¹ 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.

presented the testimony of the Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-24-0192 (hereinafter cited as “Tr.”). The LSO submitted sixteen exhibits, marked as Exhibits 1 through 16. The Individual submitted five exhibits, marked as Exhibits A through E.

THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines F, G, J, and K of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

A. Guideline F (Financial Considerations)

Guideline F states that a “[f]ailure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or [an] unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” Adjudicative Guidelines at ¶ 18. Among the conditions set forth under Guideline F that could raise a disqualifying security concern is an “inability to satisfy debts,” or “[a] history of not meeting financial obligations.” *Id.* at ¶ 19(a), (c). In citing Guideline F, the LSO alleged the following information:

1. In November 2015, the Individual filed Chapter 13 Bankruptcy, which was dismissed in September 2017 for failure to make payments; he filed for a Chapter 7 Bankruptcy in December 2017, converting all the debt from his Chapter 13;
2. In November 2023, the Individual filed Chapter 13 Bankruptcy, which, in the February 2024 LOI, he admitted was due in part to gambling; he admitted in an April 2024 psychological evaluation that he “got in over his head”;
3. In response to a February 2024 LOI, the Individual admitted to going to casinos two or three times monthly, where he played poker and slots, and admitted to playing the lottery, spending about \$400 per month on gambling. He admitted that he felt remorse for gambling and did not stop gambling when he was ahead; and
4. [The Individual] stated that his 2015 and 2023 Bankruptcies were due to divorces. However, in [the February 2024 LOI, the Individual] admitted that he had been gambling for the past 36 years and should not have continued to gamble when his financial situation worsened.

Ex. 1 at 6–7.

B. Guideline G (Alcohol Consumption)

Guideline G states that excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include "[a]lcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder," and a "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder." *Id.* at ¶ 22(a), (d). In citing Guideline G, the LSO alleged the following information:

1. On April 19, 2024, [the Psychologist] evaluated the Individual. In [the Report] dated May 7, 2024, [the Psychologist] concluded that the Individual does habitually, or binge consume alcohol to the point of impaired judgement, and he should not consume alcohol in the future. [The Psychologist] further concluded there is not adequate evidence of rehabilitation or reformation; and
2. On December 19, 2023 (one month after he reported a Bankruptcy), [the Individual] was arrested and charged with Driving While Intoxicated (DWI) combined alcohol/drug intoxication. In an LOI dated January 22, 2024, he stated he consumed five beers between 9:30 p.m. and 2:30 a.m. However, during the psychological evaluation conducted on April 19, 2024, he admitted consuming the five 12-ounce IPA beers, but he further admitted that he left to go home at 2:30 a.m. but decided to stop at the casino where he consumed three to four more 12-ounce IPA beers.

Ex. 1 at 7.

C. Guideline J (Criminal Conduct)

Guideline J states that criminal activity "creates doubt about a person's judgment, reliability, and trustworthiness. By 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 and may be disqualifying include evidence of criminal conduct, "regardless of whether the individual was formally charged, prosecuted, or convicted." *Id.* at ¶ 31(b). In citing Guideline J, the LSO alleged that on December 19, 2023, the Individual was arrested and charged with "DWI combined alcohol/drug intoxication." Ex. 1 at 7.

D. Guideline K (Handling Protected Information)

Guideline K states that "[d]eliberate or negligent failure to comply with rules and regulations for handling protected information—which includes classified and other sensitive government information, and proprietary information—raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern." Adjudicative Guidelines at ¶ 33. Conditions that could raise a security concern and may be disqualifying include "[a]ny failure to comply with rules for the protection of classified or sensitive information." *Id.* at ¶ 34(g). In citing Guideline K, the LSO alleged that:

1. On April 18, 2024, the Individual entered a secured area while carrying his personal cell phone, which was not allowed in that area. The cell phone remained in the secured area for ten minutes; and
2. On May 22, 2024, the Individual entered sensitive information using an unapproved system and on May 31, 2024, he admitted to creating processing information on an unapproved computer system.

Ex. 1 at 8.

Accordingly, the LSO's security concerns under Guidelines F, G, J, and K are justified.

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

FINDINGS OF FACT

In November 2015, after a divorce, the Individual filed Chapter 13 Bankruptcy to resolve debts totaling approximately \$225,261. Ex. 5 at 30; Ex. 15 at 137–38. In September 2017, the Individual’s Chapter 13 Bankruptcy was dismissed for “failure to make payments.” Ex. 3 at 21. In December 2017, the Individual filed Chapter 7 Bankruptcy. *Id.* In November 2023, the Individual reported to the LSO that he was filing Bankruptcy again, due to another divorce and a death in the family.² Ex. 9.

On December 19, 2023, the Individual was out with friends and consumed five twelve-ounce IPA beers between 9:30 p.m. and 2:30 a.m. Ex. 13 at 5. He then went to a casino and consumed three or four twelve-ounce beers. *Id.* During his drive home, he swerved to avoid hitting a deer and struck the curb, damaging his car such that it was undriveable. Ex. 11 at 3; Ex. A at 1. A police officer arrived and administered a field sobriety test and a breathalyzer to the Individual. Ex. 11 at 3–4. The Individual’s blood alcohol content (BAC) was .144. Ex. 12 at 1. He was arrested and charged with DWI. *Id.* at 6.

In the January LOI, the Individual reported that since 2015, he typically consumes beer “socially, once or twice a month, [three to four] beers in an evening.” Ex. 11 at 60. The Individual reported that the last time he was intoxicated was before his December 2023 arrest, and the last time he consumed alcohol was on January 8, 2024, when he consumed “[three] beers during the college football national championship game.” *Id.* at 60–61. The Individual reported that before his November 2023 Bankruptcy, he separated from his second wife, and “was paying for everything” leading up to his second divorce. *Id.* at 55. At some point, he “fell short on money, so [he] used a series of small, high interest loans to try and keep up,” until his debts “caught up to [him]” and he filed for Bankruptcy. *Id.* The Individual reported that during his two divorces, he was responsible for “mortgages, household bills, cars and insurance, and in the first case, college age children still living at home.” *Id.* at 57. When asked if his financial difficulties were due to gambling, the Individual reported that he attended local casinos “from time to time but it had not gotten too far out of hand.” *Id.*

In the February LOI, the Individual reported that he went to the casino “two to three times a month,” where he played poker, slot machines, and the lottery, “when the jackpots are over \$100 [million dollars].” Ex. 10 at 46. He reported that while he was in the casino, he gave himself a \$200 gambling budget, and he spent about \$400 per month gambling. *Id.* He also stated that the majority of his financial issues stemmed from his divorce, but “[his] gambling didn’t help.” *Id.* at 48.

In April 2024, the Individual was involved in a security incident at his place of employment, wherein he inadvertently entered a secured area while still in possession of his personal cell phone. Ex. 7 at 38. The Individual explained to his employer that he was in the secured area for about ten minutes, when he realized he had his personal cell phone in his pocket. *Id.* He then left the secured area and called security to self-report the incident. *Id.*

During his April 2024 psychological evaluation, the Individual told the Psychologist that after his arrest for DWI, he was ordered to serve probation, he had a restricted driver’s license, he was

² The Individual submitted evidence that on June 21, 2024, he filed Chapter 13 Bankruptcy. Ex. B.

required to place an interlock device in his car for 90 days, and he was required to attend a “Substance Awareness Traffic Offender Program (SATOP) educational class.” Ex. 13 at 87; Ex. D; Ex. E. The Individual also explained that since the arrest, he has “re-examined his use of alcohol and driving because he does not want to put himself or others at risk,” he does not keep beer in the home, and when he and his ex-wife go to the casino, he will not drink so he can drive home. Ex. 13 at 88. He also explained that within the past 30 days, he had consumed “three to four beers on five occasions and had consumed one beer on three occasions,” which was unusual for him because he was on vacation part of this time. *Id.* As to his Bankruptcy filings, the Individual told the Psychologist that he was required to pay “\$934 a month for the next two years,” as part of his November 2023 Bankruptcy. *Id.* at 89. He also said he is expecting a sum of money at the closing of his family member’s estate, which, when received, he will use to pay off the 2023 Bankruptcy in full. *Id.*

As part of the psychological evaluation, the Individual underwent Phosphatidylethanol (PEth)³ testing, to provide evidence of his alcohol consumption. *Id.* at 90, 94–96. The Individual’s PEth test was positive at a level of 133 ng/mL. *Id.* at 96. The Report includes a letter from a medical doctor, who interpreted the Individual’s PEth test results. *Id.* at 95–96. In the letter, the medical doctor opined that the Individual’s reported consumption of seven to ten standard alcoholic drinks per month would not trigger a positive PEth result. *Id.* at 95. The medical doctor also opined that the Individual’s PEth result indicates he regularly consumes alcohol, his average consumption is “around 4 drinks/day or more,” and the Individual is underreporting his alcohol use. *Id.*

The Psychologist opined that the Individual “habitually or binge consumes alcohol to the point of impaired judgment,” and “should not consume alcohol in the future.” Ex. 13 at 91. The Psychologist also stated that the Individual had not participated in any treatment and did not have “knowledge of the addiction process to assist him in maintaining long term recovery.” *Id.* The Psychologist also concluded there was inadequate evidence of rehabilitation or reformation from the Individual’s alcohol consumption, and recommended the Individual “participate in a substance abuse treatment program from a licensed provider knowledgeable in this area of practice,” weekly, for a period of 16 weeks. *Id.* The Psychologist also recommended that after completing the substance abuse program, the Individual should attend “maintenance/relapse prevention group therapy sessions at least twice a month for three months and then monthly for the remainder of one year.” *Id.* Finally, the Psychologist recommended that the Individual should also attend “support group meetings such as Alcoholics Anonymous [(AA)], Rational Recovery or Smart Recovery and should have a sponsor and work the steps of that program.” *Id.*

In May 2024, the Individual was involved in a second security incident, in which he entered classified information into one of his employer’s computer systems. Ex. 6 at 34. A report of the incident indicates that “[t]he information remained within the firewall, all individuals involved [were] properly cleared,” and “[s]anitation efforts were requested and conducted.” *Id.*

At the hearing, the Individual’s first ex-wife testified that the Individual lives with her and pays her rent monthly. Tr. at 15–16. She testified that she was aware of the Individual’s November 2023 Bankruptcy. *Id.* at 17. She testified that they used to go to the casino together, where she observed

³ PEth is “a direct alcohol biomarker which is found in human blood following alcohol consumption.” Ex. 13 at 90. A PEth test is used to measure the amount of alcohol a person consumed over the previous 28 to 30-day period. *Id.* A PEth test result exceeding 20 ng/mL is evidence of “moderate to heavy” alcohol consumption. *Id.*

the Individual play at the tables and the slot machines. *Id.* at 17–18. They stopped going to casinos around the summer of 2024 because the Individual’s financial situation worsened. *Id.* at 17–18, 29. She was not aware of whether or how much the Individual lost at the casinos. *Id.* at 18. Since the summer of 2024, instead of attending casinos, they go out to eat or watch sports together. *Id.* at 19.

As to the Individual’s alcohol consumption, the first ex-wife testified that during their 23-year marriage, the Individual would have a drink when they went out to eat, went to a brewery, or when they took their children on vacation. Tr. at 15, 19–20. She had not seen the Individual intoxicated since his DWI. *Id.* She kept alcohol in her home and the Individual had access to it, but he was a beer drinker and there was no beer in the home. *Id.* at 21–23. She testified that she had never noticed alcohol missing from the bottles. *Id.* at 23–24. She testified that she last saw the Individual consume alcohol in November 2024 when he had one beer while watching a football game. *Id.* at 22. She testified that the Individual now drinks energy drinks instead of beer. *Id.* at 25.

The Individual’s former manager testified that he has known the Individual since August 2023 and had supervised him from November 2023 until September 2024. Tr. at 94. They were now coworkers and saw each other weekly or biweekly. *Id.* at 95. They did not see each other socially except for the occasional team happy hour. *Id.* He had not seen the Individual at a happy hour in about a year. *Id.* at 98. The former manager was not familiar with the Individual’s finances or alcohol consumption. *Id.* at 95–96. He was aware of the Individual’s DWI and testified that it had surprised him. *Id.* at 96. Regarding the Individual’s security incidents, he testified that the Individual had always followed the rules and was forthcoming about any errors he made. *Id.* at 99. He also found the Individual to be a reliable person. *Id.*

The Individual’s colleague testified that he had worked with the Individual for about five years. Tr. at 102. At times, they worked together daily, and at one point, he was the Individual’s direct supervisor. *Id.* At the time of the hearing, he saw the Individual in person about once per week and in meetings. *Id.* They did not see each other outside of work. *Id.* at 102–03. He was aware of the Individual’s DWI. *Id.* at 103. He had seen the Individual at work happy hour events but not for at least a year. *Id.* at 103–04. He did not have any concerns about the Individual’s alcohol consumption. *Id.* at 104. He did not believe the Individual’s DWI was reflective of a larger problem because he believed the Individual had good work attendance and was a responsible, reliable employee. *Id.* at 104–05. He testified that the Individual had excellent character and had demonstrated appropriate behavior. *Id.* at 106. He was not aware of the Individual’s finances. *Id.* at 105. He was not intimately aware of the Individual’s security incidents, but he testified that security incidents involving their employer’s distribution list was a common problem due to the nature of the system. *Id.* at 108–09.

Regarding his 2015 Bankruptcy, the Individual testified that he began falling behind on his bills after he and his first wife moved from another state. Tr. at 33. He was the sole provider for his family for a period and earned \$60,000 per year. *Id.* at 31, 34. He was paying a mortgage on his previous home and had a new mortgage on the home he had just purchased with his wife. *Id.* at 33. His finances deteriorated when he and his first wife got divorced, he was “still paying the car payments, still paying [two mortgages,] still paying the utilities,” and he was “spending money at the casino.” *Id.* at 32. He began using “payday loans to keep up with the bills,” and filed for Chapter 13 Bankruptcy. *Id.* at 32. As a condition of his Bankruptcy, the Individual was required to complete

online courses about financial planning and avoiding financial hardships. *Id.* at 70. The Individual eventually was not able to make his Bankruptcy payments and converted a Chapter 13 Bankruptcy to a Chapter 7 Bankruptcy in 2018. *Id.* at 34–35. As a result of the Chapter 7 Bankruptcy, the Individual’s debts were cleared, and his creditors were paid. *Id.* at 35.

The Individual testified that before his 2023 Bankruptcy, he started a life with a second wife, he purchased two homes in relatively quick succession, though not at the same time, purchased new cars for himself and his wife, and spent \$400–\$900 per month for gambling during that time as well. Tr. at 36. He was earning approximately \$96,000 per year. *Id.* When he and his second wife decided to divorce in May 2023, the Individual wanted to expedite the proceedings, so he continued to pay the mortgage and car payments. *Id.* at 32. He described gambling as a vice that he used to deal with his depression. *Id.* The Individual described himself as “asleep at the wheel” until he read the Report. *Id.* at 41. He realized that when he experienced adversity, he made bad decisions that gave him an adrenaline rush. *Id.*

Regarding his gambling, the Individual testified that the last time he went to a casino was to see a concert with his ex-wife in the summer of 2024. Tr. at 42. He lost about \$150 from gambling that night and decided he had to stop gambling altogether. *Id.* He testified that when he gambled, he set a budget and stuck to it, never going back to the ATM to try to recover his losses. *Id.* at 42–43. However, the Individual later testified that he had, at times, lost so much money at the casino that he needed to take out payday loans to pay his bills. *Id.* at 77–78. The Individual testified that he and his ex-wife now spend time doing projects around the house and go to thrift stores and garage sales for fun. *Id.* at 43. They did not always buy things, but just liked to look through things and spend time together. *Id.* at 44.

The Individual testified that he currently pays \$900 per month to his Chapter 13 Bankruptcy trustee. Tr. at 37. He submitted a single pay-stub from his employer, dated December 31, 2024, showing a bi-weekly deduction of \$450 for his Bankruptcy. Ex. C. He estimated that he owed around \$40,000 total for the Bankruptcy. Tr. at 82. He pays \$1,000 per month in rent (which included utilities and his ex-wife’s car payment), pays for the household’s internet, and splits household expenses evenly with his ex-wife. *Id.* at 39–40. He testified that he has about \$2,000 per month left over after his bills are paid. *Id.* at 37. He used part of that money to support his son, who was in college. *Id.* at 40. The Individual was in a finance course he was required to complete for his Bankruptcy—the name of which he could not remember—and had attended financial planning seminars offered by his bank. *Id.* at 38–39. He also stated he scheduled a meeting with a financial planner to help him plan for retirement. *Id.* at 38.

Regarding his DWI, the Individual testified that on the night of his DWI, he waited about two hours after his last drink before driving. Tr. at 52. While driving home, he swerved to avoid hitting a deer and his car struck a high curb. *Id.* He testified that he told a police officer he had been drinking, after which he completed a field sobriety test and a breathalyzer, which showed that his BAC was significantly over the legal limit. *Id.* at 52–53. He testified that his behavior had been leading to, but had not yet become, a drinking problem. *Id.*

Regarding his alcohol consumption, the Individual testified that the Report made him realize that his drinking was problematic. Tr. at 45. He knew he had an issue because of his DWI, but until he read the Report, he did not realize that his alcohol consumption constituted binge drinking. *Id.* at

45–46. He testified that to fulfill the Psychologist’s recommendations, he was attending a court-mandated alcohol education course and victim impact sessions, and he started seeing a therapist once per month. *Id.* As of the hearing date, he had attended three sessions. Tr. at 46–47, 55–56; Ex. F. The therapy was not court mandated. Tr. at 56. The Individual testified that he showed the Report to his therapist, but they did not discuss it specifically. *Id.* at 63. He testified that in his therapy sessions, he discussed his “issues” with the therapist, who would give him advice and exercises or reading assignments. *Id.* at 64. He testified that the therapist was also prescribing medication to treat his depression and anxiety. *Id.* They discussed his drinking, and the Individual learned that consuming large amounts of alcohol in a short period of time “leads to other bad choices” and that giving up alcohol would solve some of his problems. *Id.* at 65.

The Individual testified that he had gone years without drinking in the past and after he received the Report, he consumed alcohol during a wedding toast and had one beer while watching sports. Tr. at 47–48. He stated that during his first meeting with his therapist, he told the therapist that he had stopped drinking. *Id.* at 91. He testified that the two drinks he consumed since his evaluation were not problematic because he did not drink excessively and did not drive. *Id.* at 50. He stated that “maybe that’s still a bad choice on my part, but, you know, I’m working toward [abstinence].” *Id.* The Individual testified that when he said he stopped drinking, he considered “drinking” to be the type of heavy drinking described in the Report. *Id.* at 90. He had not consumed alcohol in about two months. *Id.* at 47. He testified that he did read the recommendations in the Report fully and he did not realize that the Psychologist recommended he take weekly individual therapy sessions. *Id.* at 48. The Individual testified that he intended not to consume alcohol in the future. *Id.* at 49.

Regarding the security incidents, the Individual testified that in April 2024, he accidentally took his cell phone into a secured area. Tr. at 57. His desk had recently been moved from an unsecured area—which allowed him to keep his phone with him at work—and he forgot that his phone was in his pocket when he went to a secured area for a meeting. *Id.* at 57–58. He was a few steps into the secured area when he touched his pocket and realized his phone was there. *Id.* at 58. He immediately left the secured area and reported his mistake to the security office. *Id.* He testified that in May 2024, he accidentally disclosed protected information because he did not double check a distribution list before posting information in a computer system. *Id.* at 59. After about five minutes, a person who should not have been able to view the information called the Individual to tell him he had seen it and the two filed a security report together. *Id.* The Individual testified that he did not intend to break any rules, and he always performed his work with integrity. *Id.* at 60. Both incidents occurred shortly after he moved to a new position at the DOE facility. *Id.* at 57–59.

The Psychologist testified that the Individual was not rehabilitated or reformed from his habitual and binge consumption of alcohol. Tr. at 113. He was concerned that the Individual had consumed alcohol twice after his evaluation and had not told his therapist about this consumption. *Id.* at 118. He further stated that it was unclear to him whether the Individual was “totally truthful with [his therapist] about his alcohol use.” *Id.* at 113. He testified that the Individual’s PEth test results showed that he had likely underreported his alcohol consumption during his evaluation and was, therefore, concerned that the Individual had consumed more alcohol on more occasions than he testified to in the hearing. *Id.* at 119. He believed the Individual needed more treatment than the Individual’s therapist and court mandated education courses could provide. *Id.* at 113–14, 116. He was familiar with the courses the Individual was required to take after his DWI; he described the courses as being “strictly educational” and testified that they are not treatment programs supervised

by a licensed professional. *Id.* at 115–16. The Psychologist was also concerned about the Individual’s impulsivity, testifying that he did not appear to consider the consequences of his actions before taking them. *Id.* at 117.

ANALYSIS

A. Guideline F

Conditions that could mitigate Guideline F security concerns include:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) The conditions that resulted in the financial problem were largely beyond the person’s control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) The individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and
- (g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20. None of the mitigating conditions apply.

As an initial matter, the Individual testified that before filing Bankruptcy in 2015, his spending included purchasing a new home, with a mortgage, in one state, while he was still paying a mortgage on a home he owned in another state. He also admitted to spending money on two cars for himself and his then-wife, and gambling at casinos. This spending pattern continued before his November 2023 Bankruptcy filing: the Individual purchased two homes and new cars for himself and his new wife, and he continued to spend between \$400 and \$900 gambling at casinos two to three times a month. I find that the level of the Individual’s spending that led to the security concerns raised by the LSO were irresponsible and excessive. Although the Individual submitted his pay-stub, which demonstrates he is making a good-faith effort to resolve his November 2023

Bankruptcy, as explained below, I am not convinced the Individual's behavior has sufficiently changed to resolve the security concerns. Adjudicative Guidelines at ¶ 20(d).

Regarding condition (a), although the Individual's conduct that led to his 2015 Bankruptcy filing, spending beyond his means, occurred ten years ago, his pattern of spending continued until November 2023, one year and two months before the hearing. Further, his last instance of gambling occurred less than a year before the hearing. The evidence establishes that the Individual's need to file Bankruptcy, three times in less than ten years, resulted from a pattern of excessive spending, and gambling, for ten years, so his behavior was frequent. Finally, the Individual did not submit evidence to support his testimony that he completed financial planning courses after each Bankruptcy filing. Nor was he able to provide any details as to the substance of the courses or demonstrate that he would be able to stick to a budget and spend within his means. I cannot conclude that the circumstances resulting in his Bankruptcy filings are not likely to recur, and I find that they continue to cast doubt on his judgment, trustworthiness, and reliability. Therefore, condition (a) does not apply.

Regarding condition (b), it is not clear that the causes of the Individual's Bankruptcies were outside his control. While divorces were contributing factors, the Individual also described significant overspending on items such as multiple homes, vehicles, vacations, and gambling. He also admitted after filing for Bankruptcy in 2015, he continued to spend hundreds of dollars per month at the casino, knowing that gambling in that manner exacerbated his problem paying his monthly expenses and contributed to his need to file for Bankruptcy in 2023. Therefore, I cannot find that the Individual acted responsibly under the circumstances and condition (b) does not apply.

Regarding condition (c), the Individual testified that after each Bankruptcy filing, he was required to complete online courses about financial planning. However, the Individual could not name the courses he was ordered to complete and did not provide any details about the substance of the courses. There is no evidence that the Individual's completion of financial courses has contributed to his ability to live within his means and budget his finances, or that the courses helped him to understand how his gambling has affected his ability to pay his monthly expenses. Therefore, I cannot conclude that there are clear indications the circumstances that led to the Individual's financial issues have been resolved or are under control at this time. Condition (c) also does not apply.

As for the remaining mitigating conditions, the LSO did not raise concerns about past-due balances, unexplained affluence, or a failure to meet tax obligations. Therefore, the mitigating conditions at ¶ 20(e), (f), and (g), do not apply to this case.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline F concerns.

B. Guideline G

Conditions that may mitigate Guideline G concerns include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or
- (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. None of the mitigating conditions apply.

Regarding condition (a), the Individual's DWI arrest and habitual and binge consumption of alcohol occurred about one year prior to the hearing. Moreover, the Individual admitted to consuming alcohol against the recommendation the Psychologist, two months prior to the hearing. Although the Individual testified that his consumption of alcohol after his psychological evaluation should be viewed as isolated incidents, his underreporting of his alcohol consumption to the Psychologist leaves me to doubt he has not consumed more alcohol since his evaluation. Finally, because the Individual admitted that he has not abstained from alcohol and has not taken any steps to fulfill the Psychologist's treatment recommendations to resolve his habitual consumption of alcohol, I cannot conclude his maladaptive alcohol use will not recur in the future. Therefore, the Individual's alcohol consumption continues to cast doubt on his judgment, trustworthiness, and reliability, and mitigating condition (a) does not apply.

Regarding conditions (b), (c), and (d), the Individual has established, by his own admission, that he has not abstained from alcohol. He has not provided any documentary evidence to support his testimony that he has modified his alcohol consumption. He has also failed to follow the Psychologist's recommendation to participate in an alcohol treatment program. The Individual testified that he completed two classes after his DWI arrest. However, he was required to complete both classes under the terms of his probation, and completion of those courses does not indicate a willingness by the Individual to seek help for his alcohol consumption. Furthermore, the Psychologist testified the two courses completed by the Individual were educational in nature and do not constitute substance abuse treatment. Even if the Individual's testimony had been sufficient to establish a pattern of modified consumption, the Psychologist recommended permanent abstinence, indicating that modified consumption is insufficient to mitigate the concerns related to his alcohol consumption. As a pattern of abstinence or modified consumption in accordance with treatment recommendations, and participation in a treatment program are requirements of mitigating conditions (b), (c), and (d), those conditions do not apply.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline G security concerns.

C. Guideline J

Conditions that could mitigate Guideline J security concerns include:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

The Individual's December 2023 arrest for DWI is inextricably linked to his problematic alcohol use. His arrest occurred one year before the hearing and after he consumed alcohol to intoxication while in a social setting, which is not an unusual circumstance. As explained above, the Individual admitted that he has not followed the Psychologist's recommendations to enroll in alcohol treatment. The Individual also admitted he has not abstained from consuming alcohol, as recommended by the Psychologist. Until his alcohol issues are resolved, I cannot find that the Individual will not drink and drive in the future. The Individual did not allege that he was pressured or coerced into driving while intoxicated, and he admitted to engaging in the conduct. Therefore, I find that none of the mitigating conditions resolve the Guideline J security concerns. Adjudicative Guidelines at ¶ 32(a)–(d).

D. Guideline K

Conditions that could mitigate Guideline K security concerns include:

- (a) So much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;
- (c) The security violations were due to improper or inadequate training or unclear instructions; and

- (d) The violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

Adjudicative Guidelines at ¶35.

I find that mitigating condition (d) applies to resolve the security concerns related to the Individual's April 2024 and May 2024 security incidents. The Individual testified that during the April 2024 incident, he forgot his phone was in his pocket when he went to a meeting located in a secure area of a building where he was employed. Given his recent move from an area where his phone would never have been in his pocket, I find the Individual's entrance into a secured area with his personal cell phone was a genuine mistake. As to the May 2024 incident, the Individual's colleague testified that security issues arising from the distribution list were somewhat common and neither of his colleagues seemed concerned about the incident. The Individual testified that he immediately reported both incidents and that both incidents were related to his move to a new position. It appears more likely that the incidents were due to unfamiliar circumstances rather than a pattern of carelessness, or a deliberate failure to comply with rules and regulations. The Individual has a reputation as a rule follower and there is no evidence the Individual was involved in any other security incidents. Accordingly, I find that the violations were inadvertent, promptly reported, and not suggestive of a pattern. There is no evidence in the record of a compromise. Therefore, I find that condition (d) applies, and the Individual has mitigated the Guideline K security concerns.

CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guidelines F, G, J, and K of the Adjudicative Guidelines. I further find that although the Individual has successfully resolved the Guideline K security concerns, he has not succeeded in fully resolving the security concerns raised under Guidelines G, F, and J of the Adjudicative Guidelines. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Diane L. Miles
Administrative Judge
Office of Hearings and Appeals