

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of five witness and testified on his own behalf. The LSO presented the testimony of the DOE Psychiatrist. The Individual submitted fourteen exhibits, marked Exhibits A through N. The LSO submitted nine exhibits, marked Exhibits 1 through 9.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 2.

Guideline E provides that "[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. "Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." *Id.* Conditions that could raise a security concern include:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine national security eligibility or trustworthiness . . . ;
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator, security official, . . . or other official government representative;
- . . .
- (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . a pattern of dishonesty or rule violations; [and]
- . . .

² References to the LSO exhibits are to the exhibit number and the page number of the combined .pdf of the exhibit book.

(g) association with persons involved in criminal activity.

Id. at ¶ 16.

The SSC recounts that the Individual “answered ‘No’ when asked [on a security questionnaire] if he had any illegal drug use in the last 7 years”; the LSO later learned that the Individual was charged with possession of a controlled substance in 2021, and the Individual also subsequently disclosed that he had used marijuana within the timeframe covered by the above question. Ex. 2 at 9. Furthermore, the Individual failed to disclose recent, part-time employment during an interview with an investigator. *Id.* Lastly, the Individual “admitted to socializing and associating with individuals who use drugs illegally.” *Id.* at 10. The cited information justifies the LSO’s invocation of Guideline E.³

Guideline G provides that “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence . . . or other incidents of concern, . . .” and “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder . . .” *Id.* at ¶ 22(a) and (c). The SSC cited the following information: the DOE Psychiatrist’s opinion in a June 2024 report (Report) that the Individual “habitually or binge consumes alcohol to the point of impaired judgment”; the history of the Individual’s consumption of alcohol, including consuming the equivalent of eleven beers a few days prior to his evaluation by the DOE Psychiatrist; and the record of the Individual being charged in 2021 with underage possession of alcohol. Ex. 2 at 8. The cited information justifies the LSO’s invocation of Guideline G.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted . . .” *Id.* at ¶ 31(b). The SSC recited that the Individual admitted using marijuana “once or twice a year” from 2017 to 2022, that he was charged with possession of paraphernalia, speeding, and underage possession of alcohol in June 2021, that he was charged with underage possession of Alcohol in May 2021 and later pled

³ The SSC also listed additional instances of conduct, including the Individual’s history of consuming “significant amounts of alcohol” despite his “father’s history of . . . problematic alcohol use[,]” and criminal charges for underage possession of alcohol and possession of a controlled substance, “plant, 3 ounces or less.” Ex. 2 at 9–10. However, I conclude that these instances of conduct do not invoke Guideline E concerns under ¶ 16(d) because they represent conduct “explicitly covered under” other guidelines, namely Guideline G and Guideline J. I therefore do not address them further in this decision.

guilty, and that he consumed alcohol regularly as a minor.⁴ Ex. 2 at 10–11. The cited information justifies the LSO’s invocation of Guideline J.

III. REGULATORY STANDARDS

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

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

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

IV. FINDINGS OF FACT

In November 2023, the Individual submitted a Questionnaire for National Security Positions (QNSP) as part of his application for a security clearance. Ex. 5 at 130. Therein, the Individual answered “No” in response to the question, “[i]n the last seven (7) years, have you illegally used any drugs or controlled substances?” *Id.* at 122. The preamble that immediately preceded the question instructs that the question “pertain[s] to the illegal use of drugs or controlled substances or drug or control substance activity in accordance with Federal laws, even though permissible under state laws.” *Id.* In a separate section of the QNSP, the Individual disclosed that he had been charged in 2021 with underage possession of alcohol “while on a cross country road trip with two friends,” that he had been found guilty, and that his sentence was to pay a fine. *Id.* at 120–21.

In March 2024, an investigator interviewed the Individual as part of the security clearance application process. *Id.* at 133. During the interview, the Individual was confronted with the fact

⁴ The SSC does not cite, under Guideline J, the record of the Individual being charged with possession of a controlled substance. Ex. 2 at 10. Its presence here would not impact my below analysis or conclusions regarding the Guideline J security concerns because, as detailed below, the record demonstrates that the Individual was not the one actually charged with that offense.

that he had been charged with possession of a controlled substance and paraphernalia in June 2021 during the same road trip; in response, he disputed the accuracy of the records by explaining that the police charged his friend with those charges while he was only charged with underage possession of alcohol. *Id.* at 134. The investigator's report also indicates the Individual admitted that he last used marijuana in 2022 and still associated with individuals who use illegal drugs. *Id.*

The record includes an April 2024 Letter of Interrogatory (LOI) and the Individual's written responses. Ex. 7. Therein, he explained that the two underage possession of alcohol charges cited in the SSC are from the same incident.⁵ *Id.* at 163. He explained that he did not learn that he had been charged with the additional charges until the investigator confronted him with them during the interview. *Id.* at 164. As an attachment to the LOI, he provided a copy of the case report from the law enforcement agency that charged him with underage possession, and that report confirms that he was only charged with underage possession of alcohol in 2021. *Id.* at 171. He also provided a copy of the court record of his case disposition, and that record indicates that he was only charged with underage possession. *Id.* at 174 (stating that the court found the Individual guilty of the sole charge and no other charges were adjudicated or dismissed). His friend received the charges for speeding and possession of marijuana, and the report details that the friend provided the location of the marijuana discovered by the officer. *Id.* The Individual reported that his friend took responsibility for the marijuana and related paraphernalia. *Id.* at 163. The case report indicates that nobody was charged with possession of paraphernalia. *Id.* at 171. In the LOI, he confirmed that, while he was not charged with possession of the marijuana in 2021, he used marijuana one or two times a year from 2017 to February 2022. *Id.* at 165. He explained that on the day of his charge for underage possession of alcohol, he was in a vehicle with two friends who were "avid smokers" of marijuana. *Id.* at 163. He also reported his pattern of alcohol use in the LOI. He stated that he began consuming alcohol at the age of seventeen. *Id.* at 166. He described more recently consuming alcohol socially in the amount of up to six beverages approximately twice weekly. *Id.* He reported that he becomes intoxicated approximately three times a month and that he last became intoxicated after consuming eight beers over a five-hour period a few weeks before completing the LOI. *Id.* at 167.

The record includes the June 2024 Report produced by the DOE Psychiatrist who evaluated the Individual at the beginning of that month. Ex. 6. During the evaluation, the Individual described his historical alcohol consumption, including in his final years of college and most recently after graduation. *Id.* at 153. In his last two years of college, he would become intoxicated up to twice a week. *Id.* at 153–54. More recently, including the six months prior to the evaluation, he became intoxicated twice a month. *Id.* The DOE Psychiatrist noted that the Individual "denied all signs and symptoms of alcohol use disorder except for the development of tolerance." *Id.* at 153. The Individual also disclosed that his father had a history of excessive alcohol use. *Id.* at 155. The Individual reported that several days before the evaluation he consumed approximately eleven alcoholic beverages in nine hours. *Id.* at 154. Regarding his history of drug use, the Individual reported that he had consumed marijuana approximately ten times in his life. *Id.* at 154. Lastly, the Individual reported that he had been employed part-time since January 2024 by his girlfriend's father. *Id.* at 156.

⁵ The record includes a state police record that indicates the Individual was charged in May 2021 with underage possession of alcohol and a court record that indicates the Individual was charged in June 2021 with possession of paraphernalia, underage possession of alcohol, and possession of a controlled substance. Ex. 5 at 140–41.

The DOE Psychiatrist's conclusions in the Report state that the Individual met the definition of binge consumption of alcohol given that he reported consuming five or more drinks within two hours at least once a month while in college and, more recently, he has occasionally done so but "often exceeding the two hour limit." *Id.* at 157–58. The DOE Psychiatrist also noted that the Individual reported consuming "eleven beers in nine hours" days before the evaluation and becoming intoxicated on several occasions in the preceding six months. *Id.* at 158. The DOE Psychiatrist opined that the Individual exhibited poor judgment by consuming significant levels of alcohol despite his father's problematic alcohol use. *Id.* The DOE Psychiatrist explained that the Individual's history of binge alcohol use and his family history of alcohol use increases the Individual's risk of developing alcohol use disorder. *Id.* at 159. He further concluded that since there is no indication the Individual intends to change his alcohol use, the Individual's prognosis for habitual or binge alcohol use was "indeterminate." *Id.* at 158. The DOE Psychiatrist recommended that to demonstrate rehabilitation or reformation the Individual should abstain from alcohol, participate in professional alcohol treatment for a year, and participate in self-help group meetings. *Id.* at 159.

Several witnesses provided positive testimony on behalf of the Individual at the hearing. His former internship supervisor stated that the Individual is an excellent worker, is honest, and handled proprietary company information appropriately. Transcript of Hearing, OHA Case No. PSH-25-0043 (Tr.) at 17. Next, the Individual's girlfriend's father, who is also the president of the company the Individual has been employed by on a part-time basis since January 2024, testified that the Individual is trustworthy, professional, and very honest. *Id.* at 23–24, 27, 29. The Individual's friend testified that she met the Individual in 2022 while in college, that she had observed the Individual in an intoxicated state several times, and that she described his consumption during college as moderate compared to his friends. *Id.* at 35–36, 37. The friend also testified that she continues to socialize with the Individual on occasion and recalled that she last observed the Individual consume alcohol in the fall of 2024. *Id.* at 33, 39. She also recalled spending time with the Individual and others in December 2024 and during New Year's Eve 2024, and she observed the Individual abstain from alcohol both instances. *Id.* at 41–42, 45–46. A former classmate testified that the Individual is honest and reliable. *Id.* at 58–59. Lastly, a coworker who often travels with the Individual for work testified that, in the last year, he had never observed the Individual consume alcohol, including at dinner and when they socialized outside of business hours. *Id.* at 64–65.

The Individual testified that he graduated college in December 2023. *Id.* at 73. Since leaving college, he no longer spends time around people who regularly use marijuana. *Id.* at 100. While he remains friends with two people who use marijuana, they know he decided to stop, they respect his decision, and he rarely sees them in-person because they live in a different state. *Id.* at 101, 112 (stating he sees these two friends "about three to four times a year"). As support for the latter, the Individual submitted workplace documents that identify the address for both friends. Ex. I (friend 1); Ex. J (friend 2). He stated that even though he sees them infrequently, he does not want to be around them when they consume marijuana for his "own sake and keeping consistent with the [federal] rules and regulations." Tr. at 117.

The Individual testified that he started abstaining from alcohol on December 25, 2024. *Id.* at 88. He explained that he made the decision to abstain after he received the Report, and he considered it to be the right decision in light of his goals; his family history, including his father's problematic alcohol consumption; and his need to mitigate the security concerns related to his alcohol use. *Id.* at 80, 82. He testified that, as of the date of the hearing, he had been abstinent for approximately one month, and he intends to continue abstaining indefinitely. *Id.* at 83–84, 88. He also testified that he had not attended any individual or group treatment, and he does not think he has a problem with alcohol. *Id.* at 88. However, he did acknowledge and agree with the DOE Psychiatrist's opinion that his past behavior in college and for a period thereafter constituted binge drinking. *Id.*

Regarding omitting his marijuana use from the QNSP, the Individual explained that the question was confusing, and he had not been dishonest. *Id.* at 96. He stated that, at the time he completed the questionnaire, the state he resided in “was in the process of legalizing marijuana[,]” and he therefore “did not know how that was going to play into whether or not that would fall under the illegal use” described in the question. *Id.* He expressed that, at the time, he did not “really under[stand] that the question was backward-focused in terms of whether or not the drug use was illegal at the time of use.” *Id.* at 97. He then explained that the question was “phrased differently” by the investigator during the interview, which caused the Individual to disclose his history of marijuana use. *Id.* at 96. In clarifying how the investigator's question led to the disclosure, the Individual explained that the investigator first confronted him with the information that he had been charged with possession of a controlled substance, and, after he explained the inaccuracy of that information, the investigator asked him if he had “any use at all with marijuana” *Id.* at 114. He explained that he now understands that he made “an honest mistake” in judgment when interpreting the question on the QNSP, which he “corrected immediately when . . . made aware[,]” and he will not repeat the mistake. *Id.* at 97, 105.

The Individual also explained that he unintentionally failed to list his recent part-time employment because he had only worked at the organization for twenty days at the time he omitted the information, it was not consistent employment at that time since he only worked when needed, and it was only supposed to be a temporary position.⁶ *Id.* at 110. He testified that he disclosed the employment during the psychiatric evaluation because he had transitioned to a part-time employee and it became his primary source of income. *Id.* He testified that, in the future, he would contact security professionals or legal advisor for guidance when completing security paperwork or questionnaires if he has any questions regarding how to interpret the questions. *Id.* at 119.

The DOE Psychiatrist testified that the Individual's consumption of alcohol in college constituted “a pattern of binge habitual use.” *Id.* at 135. The DOE Psychiatrist then testified that, in the six months leading up to the evaluation, the Individual's reported alcohol consumption of three to six beers three times a month would qualify as habitual or binge consumption. *Id.* at 135–36 (noting that five to six beers in a session “would be binge drinking”). While the Individual had successfully remained abstinent for approximately a month, he was “very early in the process.” *Id.* at 139, 142. The DOE Psychiatrist explained that the risk factors for the Individual include the fact that he has a history of “binge” consuming alcohol “excessively” for the “last five years,” which makes it

⁶ The preamble to the specific employment question in the QNSP states “List all of your employment activities[] including unemployment . . . beginning with the present and working back 10 years. This entire period must be accounted for without breaks.” Ex. 5 at 96.

challenging to “become abstinent from alcohol without professional assistance,” and the fact that the Individual has a family history of excessive alcohol consumption. *Id.* at 139. The DOE Psychiatrist testified that the recommendations he provided in the Report regarding rehabilitation and reformation remained unchanged. *Id.* at 140. However, he did note positive factors for the Individual’s prognosis, including that the Individual does not have any complicating mental health problems. *Id.* at 143.

V. ANALYSIS

A. Guideline E Considerations

Conditions that can mitigate security concerns based on personal conduct include the following:

- (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.

I conclude that none of the above mitigating conditions apply to resolve the Guideline E concerns arising from the Individual's failure to disclose his marijuana use.

Paragraph 17(a) does not apply to resolve the concerns because the Individual omitted his history of marijuana use on the QNSP, a security form, and did not disclose his use until after the investigator confronted him with his record of being charged with possession of a controlled substance in 2021. Thus, the investigator confronted the Individual with evidence of the omitted illegal conduct before the Individual decided to disclose it. Based on the case report from the incident, there is no doubt that the Individual testified truthfully that the charging officer did not, in fact, charge the Individual with anything other than underage possession of alcohol. However, that fact does not undermine the circumstances surrounding the Individual's eventual disclosure of his drug use: by being first confronted with the evidence that he had been charged with possession of an illegal drug, the Individual was placed in the position of having to explain his past involvement with illegal drugs, and I therefore do not conclude that his subsequent disclosure constituted a prompt, good-faith effort to correct his admitted omission before being confronted with the facts. Additionally, the Individual did not disclose his most recent employer until the DOE Psychiatrist's evaluation, which occurred approximately three months after his interview with the investigator. I conclude that his eventual disclosure was not a prompt correction given the circumstances.

Paragraph 17(b) is inapplicable because there is no evidence that the Individual's conduct was caused or contributed to by advice of legal counsel or any other person.

As for ¶ 17(c), I conclude that the severity of the Individual's behavior, the passage of time since it occurred, the frequency of the behavior, and the circumstances surrounding it do not demonstrate that his behavior is unlikely to recur. My conclusion is based on my skepticism regarding the Individual's explanation for omitting his past marijuana use. I do not find credible his explanation that he omitted the information because the legality of marijuana use in his state of residence was, at the time, in flux. The question very clearly requested past illegal drug use according to federal law irrespective of state law. And his explanation demonstrates that he understood the difference. Setting aside the important fact that the question explicitly focused on illegality under federal law, even if the Individual believed that the state he resided in was going to, at some future point, make marijuana use legal, it would not impact whether his conduct was legal in that state at the time he completed the QNSP, nor would it impact whether his past conduct was legal in that state, which, by his own admission, was the focus of the query. But the question explicitly focused on illegal drug use under federal law, and his proffered rationale fails to explain why he believed that a future change in state law would impact whether his past conduct was illegal under federal law.

I find it far more likely that the Individual intentionally omitted his prior illegal drug use because he did not want it to negatively impact his clearance application. Intentionally omitting information from a security clearance questionnaire used to determine national security eligibility is not minor. Because I do not find the explanation for his omission credible, I do not conclude that the concerns are resolved by the passage of time or the frequency of his conduct. Regarding his failure to disclose his employment information during the interview, however, the circumstances surrounding this omission indicate that the conduct, standing alone, is minor. The information is related to relatively short-term and inconsistent employment, and it is not clear from the record

whether the investigator directly asked the Individual to report his work history or to simply report whether any employment information had changed since submitting the QNSP. Given my findings regarding the omission of past drug use, however, I do not conclude that his conduct is unlikely to recur, nor can I conclude that it does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

I also conclude that ¶ 17(d) does not apply to resolve the concerns. Because I find that the Individual's explanations for his concerning conduct are not credible, I conclude that the Individual has not acknowledged his behavior. I also do not conclude that he has taken positive steps to alleviate the stressors, circumstances, or factors that contributed to his conduct because I do not find credible his explanation of the circumstances and factors that led to his omissions.

The remaining conditions do not apply to resolve the Guideline E concerns related to the Individual's omissions for the following reasons. Paragraph 17(e) is inapplicable because there is no allegation in the SSC that the Individual's conduct created a security concern due to his particular vulnerability to exploitation, manipulation, or duress. Paragraph 17(f) is inapplicable because there is no evidence in the record to indicate that the information cited in the SSC under Guideline E is unreliable.

Lastly, I conclude ¶ 17(g) does apply to resolve the sole concern in the SSC that is founded upon the Individual's continued relationship with two persons who continue to use marijuana because the Individual's association with these persons is infrequent and there is no evidence that he has used marijuana since 2022. In reaching my conclusion, I considered the exhibit evidence that these two friends live in a different state, which corroborates the Individual's testimony on this fact and therefore lends support to his assertion that he sees them infrequently. Thus, his infrequent association with these two people who live in a different state, under the present circumstances, does not cast doubt upon the Individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. However, ¶ 17(g) does not apply to resolve the Guideline E concerns regarding his omission of past marijuana use from the QNSP. Accordingly, I find that the Individual has not resolved the Guideline E concerns.

B. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

I conclude that none of the above mitigating conditions apply to resolve the Guideline G security concerns. I first note that the DOE Psychiatrist's testimony leads me to conclude that, in the period after college, the Individual's consumption constituted binge consumption and not habitual consumption of alcohol. I arrive at my conclusion based on the fact that the DOE Psychiatrist did not define or provide a justification for concluding the Individual "habitually" consumed alcohol to the point of impairment. However, the DOE Psychiatrist did provide a persuasive justification for concluding that the Individual continued to engage in binge consumption by, for example, consuming eleven alcoholic beverages over nine hours. Turning to the mitigating factors, I find that ¶ 23(a) does not apply because that mitigating condition is based on the passage of time, infrequency of the conduct, or unusual circumstances under which the conduct occurred such that the concerning conduct is unlikely to recur. Here, the Individual had a significant history of binge consumption of alcohol until approximately one month before the hearing date. Accordingly, I conclude that the concerns are not mitigated by the passage of time or infrequency of the behavior. Furthermore, there is no evidence from which to conclude that the Individual consumed alcohol at any time under unusual circumstances. Based on my above reasoning, I do not conclude that his behavior is unlikely to recur or does not cast doubt on his reliability, trustworthiness, or judgment.

Second, I find that ¶ 23(b) does not apply to resolve the security concerns. Although the Individual acknowledged his pattern of alcohol use constituted binge consumption, he did not show that his subsequent actions were in accordance with treatment recommendations. He did not participate in any of the treatment recommended by the DOE Psychiatrist and had only demonstrated one month of abstinence as of the hearing. The record, therefore, does not demonstrate a clear and established pattern of abstinence in accordance with treatment recommendations.

Lastly, I find that ¶ 23(c) and ¶ 23(d) do not apply because the Individual is not currently participating in a counseling or treatment program, and he has not successfully completed a treatment program or required aftercare or, as stated above, demonstrated a clear and established pattern of abstinence in accordance with the DOE Psychiatrist's treatment recommendations.

C. Guideline J Considerations

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (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.

I find that ¶ 32(a), ¶ 32(c) and ¶ 32(d) apply to resolve the security concerns. Because I rely upon the same evidence to reach my conclusion, I will evaluate all factors together in the following analysis.

While the Individual used marijuana twice a year for five years, he stopped in February 2022. Since then, there is no evidence in the record that indicates he used marijuana again, which indicates just under three years of abstinence and therefore just under three years since he last engaged in criminal conduct. The remaining criminal conduct listed in the SSC consists of possession of paraphernalia, speeding, and a history of consuming alcohol as a minor. I find that the evidence that the Individual was speeding and possessed drug paraphernalia is unreliable because the case report demonstrates that the Individual's friend, not the Individual, was responsible for speeding and confirms that the officer did not charge the Individual with possession of paraphernalia. The record that indicates the Individual was charged with possession of a controlled substance is not consistent with the case report narrative, nor is it consistent with the Individual's description or the court record of the case disposition where it indicates only one charge was adjudicated. Furthermore, the case report and court record corroborate the Individual's testimony that his friend took responsibility for the paraphernalia; the case report states that the friend directed the officer to the location of the marijuana, which led to the officer's discovery of the paraphernalia. The above evidence corroborates the Individual's testimony and I therefore find it convincing. I further conclude that it is impossible for the Individual to once again illegally consume alcohol as a minor, since he is now of legal age to consume alcohol. Given that approximately three years have passed without the recurrence of any criminal activity—which reflects a significant passage of time—I conclude that so much time has elapsed such that his past conduct is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E, Guideline G, and Guideline J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual brought forth sufficient

evidence to resolve the Guideline J security concerns set forth in the SSC. However, the Individual has not brought forth sufficient evidence to resolve the Guideline E and G security concerns. Accordingly, I have determined that the Individual should not be granted access authorization.

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

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals