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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: December 19, 2024)	Case No.: PSH-25-0054
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_____)	

Issued: February 28, 2025

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. BACKGROUND

The Individual was granted DOE access authorization in 2006. Exhibit (Ex.) 10 at 167.² In 2008, while possessing access authorization, the Individual was arrested and charged with Driving Under the Influence (DUI). Ex. 11 at 108 (summarizing information related to the arrest as part of a background investigation of the Individual's eligibility for access authorization in 2016). Following an adjudication of the security concerns presented by the Individual's DUI offense, the Individual retained his access authorization. Hearing Transcript, OHA Case No. PSH-25-0054 (Tr.) at 44.

On October 28, 2023, the Individual was arrested and charged with DUI. Ex. 11 at 178–79 (containing an incident report prepared by the arresting officer). The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the circumstances of his arrest and his alcohol consumption practices. Ex. 13. The Individual submitted a response to the LOI on

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

² The exhibits submitted by DOE were compiled in a single PDF exhibit notebook. This Decision will cite to pages within the exhibit notebook in the order in which they appear regardless of their internal pagination.

January 1, 2024, in which he denied having ever been arrested or detained for an alcohol-related offense prior to the 2023 DUI. Ex. 14 at 191.

On June 24, 2024, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 15 at 193. The DOE Psychologist's report of the evaluation (Report) indicated that the Individual denied having consumed alcohol since his October 2023 arrest. *Id.* at 199. However, the results of Phosphatidylethanol (PEth)³ testing conducted at the request of the DOE Psychologist were positive at 163 ng/mL. *Id.* at 208. The DOE Psychologist subsequently issued the Report in which he opined that the results of the evaluation were "inconclusive" as to whether the Individual had an alcohol use disorder or habitually or binge consumed alcohol to the point of impaired judgment in light of the Individual's lack of candor in reporting his alcohol consumption. *Id.* at 202–03.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 2–4. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E, G, and J of the Adjudicative Guidelines. Ex. 2 at 28–31.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted seventeen exhibits (Ex. 1–17). The Individual submitted one exhibit (Ex. A). The Individual testified on his own behalf. Tr. at 3, 11. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 55–56.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as one basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 2 at 30–31.

Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC alleged that the Individual deliberately provided false information concerning his history of alcohol-related arrests in response to the LOI and falsely denied recently consuming alcohol in the clinical interview with the DOE Psychologist. Ex. 2 at 30–31. The LSO's allegations that the Individual deliberately provided false information in his response to the LOI and to a mental health professional involved in making a recommendation

³ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol within three to four weeks of sample collection. Ex. 16 at 214–15 (journal article describing the PEth biomarker and its use in measuring alcohol consumption).

relevant to a national security eligibility determination justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as another basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 2 at 28–29. “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. The SSC alleged that the Individual habitually and binge consumed alcohol to the point of impaired judgment and cited the Individual’s DUI offenses. Ex. 2 at 28–29. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work and habitually or binge consumed alcohol to the point of impaired judgment justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 2 at 29–30. “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. The SSC cited the Individual’s DUI offenses. Ex. 2 at 29–30. The LSO’s citation to the Individual having been arrested and charged with criminal conduct justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep’t 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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

The Individual was granted access authorization in 2006 in connection with his employment with a DOE contractor. Ex. 9 at 97. In August 2008, at which time he possessed access authorization, the Individual was arrested and charged with DUI. Ex. 4 at 38 (citation issued to the Individual in connection with his arrest). The Individual's blood alcohol content (BAC) was estimated at .190 and .188 by two breathalyzer tests conducted during the traffic stop that led to his arrest. *Id.* at 39.

The Individual entered into a diversion program for first-time offenders and was ordered to pay fines and fees, had his driving privileges suspended for 180 days, and was ordered to serve a one-year term of probation pursuant to which he was required to abstain from alcohol, submit to alcohol testing, and undergo a substance abuse evaluation. Ex. 6 at 45 (containing an order from a court); Ex. 9 at 108 (containing information provided to an investigator in 2016 as part of a routine background investigation of the Individual's eligibility for access authorization). The evaluator who conducted the substance abuse evaluation of the Individual recommended that the Individual complete an alcohol education course. Ex. 6 at 48 (containing the report of the evaluator). The Individual completed a one-week alcohol education class in November 2008 and successfully completed his probation in November 2009. Ex. 9 at 108.

In the early morning hours of October 28, 2023, the Individual was arrested and charged with DUI after a law enforcement officer observed the Individual asleep in his car with the engine running in a parking lot. Ex. 11 at 178–79; Tr. at 31 (testifying at the hearing that he pulled over after driving for some time because he did not “feel like [he] should be probably behind the wheel”). When asked by the law enforcement officer to provide his driver's license, vehicle registration, and insurance information, the Individual provided the officer with a cell phone charger. Ex. 11 at 178; *see also id.* at 178–79 (reflecting the officer's opinion that the Individual appeared disoriented). Breathalyzer tests conducted by the arresting officer estimated the Individual's BAC at .225 and .205. *Id.*

The LSO subsequently issued the Individual the LOI concerning his alcohol consumption practices and the circumstances of his arrest. Ex. 13. In his response to the LOI, the Individual claimed that he had consumed four mixed drinks over two to three hours prior to his arrest. Ex. 14 at 190. The Individual denied that he was “impaired” on the night of his arrest. *Id.* The Individual also denied that he had ever previously been arrested or charged with an alcohol-related offense. *Id.* at 191. Regarding his alcohol consumption practices, the Individual indicated that he usually consumed one to three alcoholic beverages per sitting on weekends or at gatherings with friends and that he “very rarely” consumed alcohol to the point of intoxication. *Id.* at 190–91.

Following his 2023 DUI arrest, the Individual began meeting with a counselor through his employer's employee assistance program (EAP). Tr. at 39; Ex. 15 at 198. The Individual and the EAP counselor met on five or six occasions during which the EAP counselor provided the Individual with “general” counseling related to his DUI, familial problems, and other issues related to the Individual's personal life. Tr. at 39; *see also* Ex. 15 at 198 (indicating that the Individual told the DOE Psychologist that “he did not find the EAP sessions helpful”).

On March 12, 2024, a judge ordered the dismissal of the 2023 DUI charge against the Individual at the request of the prosecuting agency. Ex. A. The Individual testified at the hearing that the

charge was dismissed in part because the law enforcement officer who arrested him was outside of his jurisdiction at the time of the arrest. Tr. at 37–38.

On June 24, 2024, the Individual met with the DOE Psychologist for a psychological evaluation. Ex. 15 at 193. During the clinical interview portion of the evaluation, the Individual denied that he “had a significant problem with alcohol,” but also stated that he had “probably drank more than [he] should have” in the past. *Id.* at 199. The Individual told the DOE Psychologist that he had not consumed any alcohol since his October 2023 arrest, and that he did “not anticipate consuming alcohol in the future.” *Id.*

As part of the psychological evaluation, the DOE Psychologist administered the Minnesota Multiphasic Personality Inventory-3 (MMPI-3) to the Individual. *Id.* at 200–02. The Individual’s responses produced a result on the “L” validity scale, which measures the extent to which respondents portray themselves as virtuous, greater than ninety-nine percent of respondents.⁴ *Id.* at 201–02. This elevated score on the “L” validity scale led the DOE Psychologist to conclude that there was “a strong possibility that [the Individual] approached the assessment defensively” *Id.* at 202; *see also* Tr. at 73–75 (testifying at the hearing that, although this score was highly elevated, elevated “L” validity scales are common in psychological evaluations related to adjudication of eligibility for access authorization and that the DOE Psychologist considered the Individual’s MMPI-3 test results to be noteworthy but not highly significant).

At the request of the DOE Psychologist, the Individual provided a sample for PEth testing. Ex. 15 at 199. The Individual initially provided a sample for testing on June 24, 2024; however, due to a laboratory error, the results of that PEth test were not received. *Id.* The Individual produced a second sample for PEth testing on July 15, 2024, which produced the PEth test result upon which the DOE Psychologist based his opinion. *Id.* The results of the second PEth test were positive at 163 ng/mL. *Id.* at 208. Based on information contained in a journal article concerning the interpretation of PEth test results, the DOE Psychologist inferred that the Individual had engaged in “[s]ignificant [c]onsumption” of alcohol in the three to four weeks prior to providing the July 15, 2024, sample. *Id.* at 199; *see also* Ex. 16 at 215 (journal article indicating that “PEth is currently considered to be an indicator of purposeful alcohol ingestion at values > 20 ng/mL”).

On August 20, 2024, the DOE Psychologist issued his Report. Ex. 15 at 203. In the Report, the DOE Psychologist indicated that it was “inconclusive” whether the Individual had an alcohol use disorder or habitually or binge consumed alcohol to the point of impaired judgment in light of the results of the PEth test which indicated that the Individual had consumed alcohol within three to four weeks of the PEth test despite his reported abstinence from alcohol. *Id.* at 202. The DOE Psychologist recommended that the Individual complete an “Early Intervention” alcohol education class to help the Individual “identify risk factors and unhealthy behaviors in an attempt to prevent [a] substance use disorder[.]” *Id.* at 203.

At the hearing, the Individual denied that he had consumed alcohol between his October 2023 arrest and the June 2024 psychological assessment. Tr. at 19. The Individual claimed that he resumed consuming alcohol in early July 2024 while on a cabin vacation with family members

⁴ Questions scored on the “L” scale ask respondents whether they, for example, ever feel an urge to curse or worry about their appearance. Tr. at 75. The Individual denied both of these common experiences. *Id.*

who do not consume alcohol for religious reasons. *Id.* at 17, 24, 54; *see also id.* at 46–47 (testifying that he could not remember why he decided to resume alcohol at that time). The Individual estimated that he consumed between twenty and thirty drinks over four days while on the vacation. *Id.* at 28. When asked why in response to the LOI he denied having any alcohol-related offenses prior to the 2023 DUI, the Individual denied recollection of providing this response but indicated that he did not “know why [he] would answer that way.” *Id.* at 36.

The Individual currently consumes alcohol in social settings several days per month. *Id.* at 16. On these occasions he will “try” to “only hav[e] two to three drinks,” but has become intoxicated on at least two occasions since he resumed consuming alcohol. *Id.* at 18–19. The Individual does not believe that his alcohol consumption is problematic or negatively affects his life. *Id.* at 48–49. He did not pursue the alcohol education class recommended by the DOE Psychologist because he had already taken an alcohol education class in connection with his 2008 DUI and did not believe that he would benefit from completing a similar course again. *Id.* at 40, 47–48.

The DOE Psychologist testified at the hearing that it is common for individuals to temporarily abstain from alcohol in response to a crisis only to return to problematic alcohol consumption after the crisis has abated. *Id.* at 69. The DOE Psychologist indicated that the Individual’s status remained inconclusive and that he could not offer a prognosis. *Id.* at 72, 75–76; *see also id.* at 67 (testifying that the Individual’s efforts to hide his intentions with respect to alcohol were concerning and made any informed diagnosis or opinion “difficult”). The DOE Psychologist testified that the Individual’s EAP counseling was not consistent with his recommendation for alcohol education because the EAP counseling was insufficiently alcohol focused. *Id.* at 71–72.

V. ANALYSIS

A. Guideline E

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.

Before addressing the mitigating conditions, I will first address the Individual's claims that he did not provide false information to the DOE Psychologist. The LSO's allegation that the Individual falsely denied consuming alcohol prior to the psychological evaluation is partially supported by the results of the second PEth test. However, since the test was conducted twenty-one days after the clinical interview, it is impossible to conclusively determine whether the Individual consumed alcohol prior to the clinical interview and falsely denied doing so to the DOE Psychologist or whether he resumed consuming alcohol after the clinical interview as he claims.

Whether or not the Individual consumed alcohol between his October 2023 DUI and the June 2024 clinical interview, I find it highly likely that the Individual intended to mislead the DOE Psychologist when he told him that he anticipated abstaining from alcohol in the future. The fact that the Individual consumed alcohol within two weeks after the clinical interview and first PEth test strongly suggests that he was deferring alcohol consumption until after this important evaluation. Moreover, the fact that the Individual admitted to having consumed alcohol at a remote family gathering among individuals who did not consume alcohol suggests that the Individual planned in advance to consume alcohol at the gathering. Additionally, the results of the MMPI-3 test suggest that the Individual may have been guarded during the clinical interview and not fully disclosed unfavorable information about himself. Taken together, I find that it is sufficiently likely that the Individual falsely told the DOE Psychologist that he had no future intentions of consuming alcohol, when he in fact did intend to do so, to support the LSO's allegation that the Individual was untruthful to the DOE Psychologist – even supposing the Individual did not consume alcohol prior to the psychological evaluation.

Turning to the Individual's omission of his 2008 DUI in response to the LOI, the high probability of the LSO learning of the DUI independently calls into question whether the Individual would have been motivated to have intentionally omitted this information from his response to the LOI. However, it also seems highly improbable that the Individual would have forgotten being arrested for DUI and serving a one-year term of probation, particularly since he was interviewed about the 2008 DUI during a 2016 reinvestigation of his eligibility for access authorization. Ex. 9 at 108–09. The Individual's testimony at the hearing, denying recollection of responding to the LOI,

provided no insight into the factors that led to his responses. Faced with two improbable explanations for the Individual's omission of the 2008 DUI from his response to the LOI – that he hoped the DUI occurred sufficiently long ago that the LSO would not detect it and that he genuinely forgot about the event – I find that it was not unreasonable for the LSO to determine that this omission presented security concerns.

Turning to the mitigating conditions, the Individual's alcohol consumption was not revealed until the second PEth test results were obtained, and the Individual's omission of the 2008 DUI in his response to the LOI was revealed by the DOE Psychologist's review of the Individual personnel security file. Accordingly, the Individual did not come forward with the omission and falsification before being confronted with the facts. Thus, the first mitigating condition is inapplicable. Adjudicative Guidelines at ¶ 17(a).

The second mitigating condition is inapplicable to the facts of this case because the Individual did not allege that he relied on the advice of counsel or another representative in responding to the LOI or answering the questions of the DOE Psychologist in the clinical interview. *Id.* at ¶ 17(b).

The Individual's failure to provide accurate information related to his alcohol use and history of alcohol-related arrests presents significant security concerns, both because of the doubts raised as to his honesty and trustworthiness and the fact that the Individual's lack of forthcomingness has prevented the LSO from being able to fully adjudicate the concerns under Guideline G, as demonstrated by the DOE Psychologist's inability to conclude whether the Individual has an alcohol use disorder or habitually or binge consumes alcohol to the point of impaired judgment. At the hearing, the Individual denied having intentionally sought to minimize the significance of his alcohol-related issues. Accordingly, I find that the Individual's conduct is ongoing and did not occur under unique circumstances. Therefore, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The fourth mitigating condition is inapplicable to the facts of this case because the Individual has neither acknowledged minimizing his alcohol-related problems nor pursued counseling related to this conduct. *Id.* at ¶ 17(d). The fifth mitigating condition is irrelevant because the LSO did not allege that the Individual engaged in conduct that placed him at heightened risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). For the reasons explained above, I find that the information on which the LSO based its security concerns was sufficiently reliable to raise security concerns under Guideline E. For those same reasons, I find the sixth mitigating condition inapplicable. *Id.* at ¶ 17(f). The seventh mitigating condition is irrelevant because the LSO did not allege that the Individual associates with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

For the aforementioned reasons, I find that none of the mitigating conditions under Guideline E are applicable to the facts of this case. Accordingly, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; 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.

Before addressing the mitigating conditions under Guideline G, I will briefly explain why I find the LSO's allegations that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment sufficiently supported to raise security concerns under Guideline G. As the DOE Psychologist noted in the Report, the positive PEth test, in of itself, does not conclusively show that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment. Ex. 15 at 199; *see also Personnel Security Hearing*, OHA Case No. PSH-24-0031 at 12–13 (2024) (concluding that a PEth test result of less than 200 ng/mL was not sufficient evidence in of itself to establish that an individual habitually or binge consumed alcohol to the point of impaired judgment because of the PEth test's inability to distinguish between consumption of large amounts of alcohol to intoxication in a single sitting and consumption of moderate amounts of alcohol in numerous sittings). However, in this case, the positive PEth test showed that the Individual had likely either lied about abstaining from alcohol prior to the clinical interview or strategically delayed consuming alcohol until after the clinical interview. In either case, the PEth test showed that the Individual was not a reliable source of information concerning his alcohol consumption. Taking together the positive PEth test, the Individual's unreliability in reporting his alcohol consumption, the Individual's multiple arrests for DUI, and the extremely high BAC levels the Individual produced in connection with his arrests, I find it reasonable for the LSO to have concluded that the Individual habitually or binge consumed alcohol to the point of impaired judgment.

Despite his multiple arrests for DUI, the Individual continues to consume alcohol and, by his own admission, has become intoxicated multiple times since the clinical interview. As the Individual continues to consume alcohol to intoxication, and likely has done so more often than he acknowledges in light of his unreliability in reporting his alcohol consumption, I find that the Individual's problematic alcohol consumption is likely ongoing. I cannot conclude that the

Individual's problematic alcohol consumption was infrequent or the product of unusual circumstances. For these reasons, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The second mitigating condition is inapplicable because the Individual denies that he uses alcohol maladaptively, has not taken any actions to overcome the problem, and continues to consume alcohol to the point of intoxication. *Id.* at ¶ 23(b). The third and fourth mitigating conditions are inapplicable because the Individual has not participated in or completed alcohol-related treatment or counseling. *Id.* at ¶ 23(c)–(d).

For the aforementioned reasons, I find that none of the mitigating conditions is applicable to the facts of this case. Accordingly, I find that the Individual has not resolved the security concerns under Guideline G.

C. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

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

Id. at ¶ 32.

While over one year has passed since the Individual's 2023 arrest for DUI, the facts that the Individual has been arrested for DUI on multiple occasions and continues to consume alcohol to the point of intoxication indicate that the probability of recurrence are too high for the passage of time to mitigate the security concerns presented by the Individual's DUI arrests. Additionally, there is no indication that the Individual's most recent DUI occurred under unusual circumstances. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The Individual does not allege that he was pressured or coerced into driving while intoxicated, and thus the second mitigating condition is irrelevant. *Id.* at ¶ 32(b). While the Individual's 2023 DUI charge was dismissed, in part due to the arresting officer lacking jurisdiction to make the arrest, there is ample evidence that the Individual committed the offense. Thus, the third mitigating condition is inapplicable. *Id.* at ¶ 32(c). The fourth mitigating condition is

inapplicable because the Individual has not presented evidence that he pursued any actions to demonstrate rehabilitation since his 2023 DUI. *Id.* at ¶ 32(d).

For the aforementioned reasons, none of the mitigating conditions are applicable. Accordingly, the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, G, and J of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns asserted by the LSO. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals