



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 (OHA) 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 Psychologist. The Individual submitted thirty exhibits, marked Exhibits A through DD.<sup>2</sup> The LSO submitted twelve exhibits, marked Exhibits 1 through 12.<sup>3</sup>

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption), Guideline I (Psychological Conditions), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 5–8.

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, . . .”; “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . .”; and “diagnosis 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)–(b), (d). The SSC cited that the DOE Psychologist concluded that the Individual meets the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, criteria for a diagnosis of Unspecified Alcohol-Related Disorder (UARD) without evidence of rehabilitation or reformation, the Individual tested positive for alcohol at work and admitted that he consumed up to thirty-four alcohol beverages the night prior to reporting to work, and the Individual has a criminal record that includes seven separate instances of alcohol-related criminal conduct from 1990 to 2017 that range from driving under the influence of alcohol or drugs (DUI) to speeding. Ex. 1 at 5–6. The cited information justifies the LSO’s invocation of Guideline G.

Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. Conditions that could raise a security concern include “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness . . .” *Id.* at ¶ 28(b). The SSC listed the DOE Psychologist’s opinion that the Individual’s “decisions have shown a lack of regard for requirements, rules, and regulations, which is a personality condition or trait that has impaired his judgment, stability, reliability, and trustworthiness.” Ex. 1

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<sup>2</sup> References to the Individual’s exhibits are to the exhibit letter and the page number of the combined .pdf of the exhibit book.

<sup>3</sup> References to the LSO exhibits are to the exhibit number and the page number of the combined .pdf of the exhibit book.

at 4. As explained in detail below in Section V, the information contained in the record does not justify the LSO's invocation of Guideline I.

Guideline J provides that “[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). In addition to citing the seven alcohol-related criminal charges referenced above under Guideline G, the SSC cited a 2023 criminal charge for harassment, a June 2014 charge for unlawful hunting or fishing, and six separate instances of motor vehicle-related criminal conduct unrelated to alcohol consumption that occurred between 2003 and 2014. The fifteen separate instances of criminal conduct justify 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

The Individual has a history of alcohol-related criminal charges. In December 1990, he was charged with minor procuring alcoholic beverages. Ex. 12 at 222. In January 2001, he was charged with and convicted of DUI. *Id.* at 423. In June 2009, he was again charged with and pled guilty to DUI. *Id.* at 194–95. In October 2010, he was charged with aggravated DUI. *Id.* at 195–96. In

September 2015, he was charged with DUI for a fourth time, which the court ultimately dismissed. *Id.* at 195. In May 2015, he was charged again with minor procuring alcohol. *Id.* at 222. And in January 2017, he was arrested for aggravated DUI, which resulted in a court order for him to obtain alcohol treatment, which he completed. *Id.* The record indicates that the treatment provider diagnosed the Individual with Alcohol Use Disorder, moderate. *Id.* at 216.

The record also demonstrates that the Individual has a history of non-alcohol related criminal charges, traffic citations, and warnings. He received a citation for unlawful hunting or fishing in 2014; a citation for speeding in 2014; a citation for no valid driver license in 2008; a warning for speeding in August 2007; a citation for speeding, no registration, no valid driver's license, and no proof of insurance in 2007; a citation for driving on a suspended or revoked license in 2005; and a citation for following too close in 2003. *Id.* at 220, 226, 425, 427.

The most recent allegation of criminal conduct cited in the SSC occurred in March 2023 when the Individual allegedly sexually harassed his ex-girlfriend during a youth athletic competition. *Id.* at 197, 233. The details of the incident are contained in a report produced by an investigator who conducted an investigation related to the Individual's application for access authorization. *Id.* at 244. The incident occurred while the Individual was refereeing a girls' middle school athletic game. *Id.* at 245. A school principal told the investigator that he received a call from a female coach who complained that the Individual "had been making inappropriate comments of a sexual nature" and kissed her. *Id.* The complainant reported that she used to date the Individual, she was seeing someone else romantically, and the kiss made her "uncomfortable and offended." *Id.* The incident was subsequently reported to the head of security by the school administration. *Id.* The head of security, who was a police officer at the time, confirmed receiving the report from the school administration, and he said that he advised the complainant at the time to contact the police. *Id.* at 244. The head of security also stated that the Individual "had poor relationships with children due to lacking social boundaries" and that the Individual invades personal space, detailing that the Individual had once hugged him in an "inappropriate manner." *Id.* According to the principal, the Individual had consequently "retired and agreed not to referee anymore." *Id.* at 245. The investigator's report does not provide a final disposition for this incident other than that the case was forwarded to the district attorney's office for review. *Id.* at 223.

The Individual tested positive for alcohol at work in early June 2023. Ex. 5 at 34. The following month, an investigator interviewed the Individual. Ex. 12 at 193. During the interview, the Individual disclosed that his employer tested him because another employee reported that he smelled of alcohol. *Id.* He reported that he had previously undergone alcohol treatment in 2018 and had been sober since that year until the day before his positive workplace alcohol test. *Id.* at 193, 196. He also reported that, the day before his positive test, he had consumed one "shot" of liquor and approximately fifteen beers throughout the day with family. *Id.* at 193. And he stated that he "did not feel affected or intoxicated" at the time of the test. *Id.* As a result of the positive test, the Individual's employer required him to contact the employer's alcohol awareness program on June 12, 2023, and he thereafter began a six-week alcohol education class that met weekly and required random alcohol breath tests. *Id.* He completed the alcohol education class on July 27, 2023. Ex. I. He also reported to the investigator that he had consumed two beers on July 1, 2023. Ex. 12 at 193. He stated that he intended to remain sober going forward, in part, to keep his job. *Id.*

The record also includes the Report produced by the DOE Psychologist who evaluated the Individual on June 17, 2024. Ex. 9. The DOE Psychologist reported that the Individual had previously attended and completed two court-mandated alcohol treatment programs—one in 2009 and the other in approximately 2018. *Id.* at 52. During the evaluation, the Individual reported that, prior to his 2017 DUI, he would typically consume six beers over the weekend. Ex. 9 at 51. He also repeated his claim that he had been abstinent since completing the court-ordered alcohol treatment program in 2018 up until the day before his positive alcohol test at work. *Id.* at 51. However, the Individual estimated the number of alcoholic beverages he consumed that day to be over thirty—instead of the sixteen he reported to the investigator. *Id.* at 50. The DOE Psychologist noted that .225 g/210L is “nearly three times the .08 g/210L level considered to be intoxication[,]” and at that level a person could expect to experience “impaired judgment, . . . risk of blackouts, and often loss of consciousness.” *Id.* at 51–52.

The Individual established that he had since completed an outpatient alcohol treatment program (IOP), which ran from July 2023 to January 2024. *Id.*; *see also* Ex. C (IOP certificate of completion) *and* Ex. A (letter from the IOP indicating he attended the two-phase, twenty-four week program from July 11, 2023, to January 3, 2024). However, he also reported that he had subsequently consumed alcohol starting in May 2024 and ending in June 2024. Ex. 9 at 51. According to the DOE Psychologist’s review of the Individual’s records, the IOP counselor recommended that the Individual continue in an aftercare program. *Id.* The Individual, however, told the DOE Psychologist that he did not attend it because it was “not mandatory” and he did not think he could take the time off from work. *Id.*

As part of the psychological evaluation, the Individual underwent a Phosphatidyl Ethanol (PEth) test, “which can detect any significant alcohol use over the past three to four weeks.” *Id.* at 52. The result came back positive at the level of 56 ng/mL, over the 20 ng/mL threshold, which a reviewing psychiatrist interpreted as evidence that the Individual had consumed alcohol in the month preceding the test and was therefore “clearly inconsistent with [the Individual’s] self-reported drinking history.” *Id.* at 53. Based on the Individual’s reported history of alcohol consumption, including his reported pattern of consumption prior to 2018, his several DUI charges, the circumstances of his positive test at work, his apparent development of alcohol tolerance based on not feeling the impact of his blood alcohol content of .225 g/210L, his failure to enroll in the aftercare treatment recommended by the IOP counselor, and his dishonesty regarding alcohol consumption as demonstrated by his PEth result, the DOE Psychologist concluded that the Individual met the criteria for a diagnosis of UARD. *Id.* at 54. The DOE Psychologist recommended that, to demonstrate rehabilitation, the Individual should attend a treatment aftercare program for at least six months while undergoing monthly PEth testing to demonstrate his abstinence from alcohol. *Id.* Alternatively, to demonstrate reformation, the DOE Psychologist recommended that the Individual engage in monthly PEth testing for twelve months. *Id.*

The DOE Psychologist also concluded that the Individual had a personality condition or trait that “is impairing his judgment, reliability, and trustworthiness” based on the Individual’s history of violating the law and his employer’s rules regarding alcohol consumption, including during the employer-mandated alcohol education; his willingness to consume alcohol again once he was “no longer being held accountable”; and his lack of candidness. *Id.* To address the personality

condition, the DOE Psychologist again recommended that the Individual participate in the aftercare program for six months because it “has elements to address co-occurring problems . . . (i.e., . . . personality concerns), [and] has the potential to effectively treat these personality traits/mental condition . . .” *Id.*

Prior to the hearing, the Individual submitted a written statement on October 14, 2024, in which he provided some updated information. Ex. 2. First, he acknowledged that he was an alcoholic. *Id.* at 13. But, he asserted that he had last consumed alcohol on or around May 12, 2024, which is a month earlier than the date he reported to the DOE Psychologist. *Id.* at 14. He also stated that he did not initially enroll in aftercare because he and his IOP treatment team jointly decided it “was not the best option” for him at the time, but, after receiving the DOE Psychologist’s Report, he decided to enroll in aftercare and undergo the recommended PEth testing. *Id.* The record includes five PEth test results, one for each month running from September 2024 to January 2025. Ex. O (September); Ex. P (October); Ex. Q (November); Ex. R (December); Ex. S (January). Only the September test had a positive result, which was slightly above the 20 ng/mL threshold. Ex. O.

The first witness to testify at the hearing was the Individual’s employee assistance program (EAP) counselor. Transcript of Hearing, OHA Case No. PSH-25-0015 (Tr.) at 16. She first met with the Individual in February 2024 to provide individual counseling. *Id.* at 16–19. She provided counseling to the Individual a total of six times, the last session occurring January 22, 2025. *Id.* at 21. She described the Individual as “very expressive [and] honest” during the sessions. *Id.* at 22. She testified that the Individual had acknowledged that it had been difficult to maintain his progress in treatment, he realized he had been selfish, he wanted to turn his life around, and he accepted responsibility for coming into work with alcohol in his system as opposed to blaming the person who reported him. *Id.* at 24, 26. She testified that the Individual has demonstrated a sincere effort, and while they do not have any future counseling sessions scheduled, he can always schedule a session in the future. *Id.* at 26–27. She believed that he would be successful if he “stays engaged in the resources that have helped him maintain his sobriety.” *Id.* at 27.

The IOP counselor testified the Individual successfully completed the IOP, which included individual and group treatment sessions every week for twenty-four weeks. *Id.* at 36–37. The IOP counselor confirmed that the Individual had not been recommended to participate in aftercare based on his positive performance and active engagement throughout the program. *Id.* at 38–39. The IOP counselor confirmed that the Individual later enrolled in the aftercare program in October 2024. *Id.* at 40. That program consists of one group session and one individual session once a month. *Id.* at 42. She said that, to her knowledge, he had been able to maintain sobriety since December 2023 except for “one or two occasions where he has drank moderately.” *Id.* at 46. She also testified that the Individual had been participating in the aftercare program for four months. *Id.* at 44. The Individual also disclosed that he intended to be sober most of the time but may consume alcohol moderately on a holiday during a celebration. *Id.* at 45. The IOP counselor testified that the Individual had been diagnosed by the aftercare program with alcohol abuse uncomplicated, improved, which meant he had an alcohol problem but the “addiction to alcohol is no longer serious.” *Id.* at 48.

The Individual’s work group foreman testified that the Individual is a great member of the work group and extremely dependable. *Id.* at 56.

The Individual's girlfriend of seven years testified that the Individual is "a recovering alcoholic." *Id.* at 70. She testified that the Individual was only sober for approximately two years starting in 2017 and began consuming alcohol again socially around 2019. *Id.* at 71. After testing positive for alcohol at work, she observed the Individual consume alcohol occasionally to treat alcohol withdrawal symptoms such as tremors. *Id.* at 79. Since completing the IOP, he has been more open and accountable regarding his alcohol use. *Id.* at 81. He also began focusing more on family. *Id.* at 82. She confirmed that he had consumed alcohol in May and August 2024. *Id.* at 84, 90. For example, he went to a three-day sporting event in May and was "drunk" one of those days after consuming approximately twelve beers. *Id.* at 85–86. After that event, the Individual identified it as a trigger and they decided to avoid the event in the future. *Id.* at 87. However, he consumed alcohol again in August 2024 on several occasions, including consuming three beers while at a sporting event on August 10 and then approximately eight alcohol beverages on the following day. *Id.* at 87–88. She testified that he has been completely sober since August 11. *Id.* at 88–89. She said that in the past he used to cover up his abstinence around others, but since August he has been open and honest regarding his sobriety. *Id.* at 90. She testified that he no longer turns to alcohol to deal with stressful situations. *Id.* at 96. She also described how his friends and family have shown positive support by checking in on him and providing words of encouragement. *Id.* at 97.

The girlfriend lastly testified about the night of the alleged harassment incident. *Id.* at 99. She said that she observed the Individual give both team coaches a "side hug" during the game, and he did not engage in any other physical or inappropriate contact. *Id.* at 100–01, 110. She also testified that he turned in his retirement paperwork in January 2023, a few months prior to the harassment allegation. *Id.* at 111.

The Individual's mother testified that she had seen the Individual change his behavior over the last six months. *Id.* at 119. He is a lot more involved and supportive of family members. *Id.* The mother also testified that he no longer associates with the people with whom he used to consume alcohol. *Id.* at 126.

The Individual testified that on May 31, 2023, the day before his positive test at work, he was helping his family set up for a graduation party and he consumed approximately eighteen beers and "a few drinks" from a bottle of whiskey that night. *Id.* at 135–36 (stating he could not recall the actual number). He drove home from the party at 2:00 a.m. and left his home for work a little before 6:00 a.m. *Id.* at 137–39. He confirmed that he did not feel intoxicated on the drive to work and "felt all right" once he arrived and started his workday. *Id.* at 139–40. He stated that he made a "bad decision" that day, and, through the IOP, became grateful that his colleague reported him for suspicion of alcohol use. *Id.* at 141–42 (acknowledging that he was first upset at his colleague).

The Individual admitted that his statements to the DOE Psychologist and the investigator that he had been abstinent from 2018 until May 31, 2023, were incorrect. *Id.* at 142–43. He stated that he had instead only been sober for approximately eighteen months after his January 2017 DUI. *Id.* at 144. Starting in April 2023, approximately five years after he began drinking alcohol again, he regularly consumed up to twelve beers on the weekends and up to six beers after work during the week every other day. *Id.* at 144–46.

The Individual testified that his time in treatment through EAP and the IOP changed his view on alcohol consumption. *Id.* at 150. He said that the treatment made him realize that he was on a path to wind up like the people in the group sessions that he believed were “ten times worse off . . .” *Id.* at 150.

He testified that he did not accept the offer to continue with the IOP aftercare after initially completing the IOP, but he later decided to do aftercare after he received the Report containing the DOE Psychologist’s recommendation. *Id.* at 153, 158. He also reported that he had consumed alcohol twice in 2024: on Mother’s Day and a week later at the sporting event described above by his girlfriend. *Id.* at 154. He testified that at the latter event he consumed seven beers in one day instead of the twelve described by his girlfriend. *Id.* at 155. He then contradicted himself by testifying that he may have had a “beer or two” between May and July 2024 and confirmed his last drink occurred in August 2024. *Id.* at 156–57. He testified that he now avoids situations that would have previously triggered his alcohol use, like sporting events in particular cities. *Id.* at 163. He confirmed that his relationships had improved since discontinuing alcohol use. *Id.* at 165. He also disclosed that he has been speaking with an Alcoholics Anonymous sponsor weekly since August 2024, whom he developed a relationship with in 2017. *Id.* at 167, 193; *see also id.* at 83 (girlfriend testifying that he speaks weekly with the sponsor). He testified that he intends to remain completely abstinent into the future. *Id.* at 168.

Regarding the allegation of harassment, the Individual testified that he hugged both coaches and stated a brief pleasantry prior to refereeing the game. *Id.* at 170. He testified that he could not recall trying to kiss the coach. *Id.* at 171. The Individual opined that a jealous boyfriend or husband may have been upset about the hug and forced the complainant to make a report. *Id.* at 173. The Individual said that a police officer questioned him about an attempt to kiss the coach. *Id.* He also said that the officer told him that they had reviewed videotape evidence that exonerated him. *Id.* at 192. The Individual also denied the assertion that he invades personal space and said that people mistake his kindness for weakness. *Id.* at 176. The Individual provided a written statement dated January 3, 2025, from an Athletic Director who reported the following:

I am aware that a complaint was filed against [the Individual] during an elementary [] game in March of 2023. These claims were investigated by district security personnel and could not be corroborated. No evidence of wrong doing was established and the investigation has been closed.

Ex. W at 78.

The Individual provided the following information regarding his past criminal charges. The 2014 hunting and fishing violation resulted from fishing in a lake that had restricted access. Tr. at 178. He had three DUI convictions, the most recent in 2017. *Id.* at 180–81. He denied that he was charged with minor procuring alcohol in May 2015. *Id.* at 181–82. He also testified that the 2015 DUI was ultimately dismissed. *Id.* at 180–83. He testified that, generally, he was young, careless, and made mistakes in the past that resulted in his criminal history. *Id.* at 184. He believes he is now a “[t]otally different person.” *Id.*



The DOE Psychologist testified last. The DOE Psychologist concluded that, based on the number of previous relapses after completing the IOP, she could not conclude that the Individual had been rehabilitated from his UARD. *Id.* at 211. She opined that if the Individual continued aftercare and consulting with his sponsor “his prognosis would be good.” *Id.* at 212. She recommended that the Individual continue aftercare and abstinence for another six months to demonstrate rehabilitation. *Id.* at 213.

Regarding the diagnosis of a mental condition, the DOE Psychologist testified that “a mental condition . . . can be a pattern of behaviors and [the Individual] had a pattern of disregard for laws and regulations, of lacking candor . . . .” *Id.* at 213. She further opined that the Individual’s testimony was consistent with more “openness and candor” than in the past, and that the witnesses had provided “a good deal of information” that supported his changed behavior. *Id.* at 214. She therefore concluded that the Individual’s pattern of behaviors that had supported her conclusion that he had a mental condition was currently under control or in remission with a low probability of recurrence or exacerbation. *Id.* The DOE Psychologist also testified that the mental condition and UARD were not necessarily distinct conditions because of the interrelation of the factors that supported her opinion, including his lack of candidness and violations of laws and rules as a result of his alcohol consumption. *Id.* at 216.

## **V. ANALYSIS**

### **A. 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.

Paragraph 23(a) 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. None of the elements in ¶ 23(a) are met because I conclude, based on the record and DOE Psychologist's opinion, that the Individual has not yet resolved the concerns derived from his problematic consumption of alcohol despite engaging in treatment—a point that I discuss in further detail below. Given that those concerns remain unresolved, he is therefore at risk of relapse and again engaging in concerning alcohol-related incidents. I therefore conclude that the passage of time, the frequency of his conduct, and the circumstances around it do not establish that his conduct is unlikely to recur. I do not find that ¶ 23(a) applies to resolve the concerns.

I further conclude that ¶ 23(c) does not apply to resolve the concerns because, while the Individual has been participating in treatment recommended by the DOE Psychologist, he has a history of relapse. The record establishes that the Individual underwent treatment twice previously: he underwent alcohol-related treatment in 2009 and again in 2018 after his most recent DUI. Each time, he returned to alcohol consumption.

Lastly, I conclude that ¶ 23(b) and ¶ 23(d) do not apply to resolve the concerns for the following reasons. The record is clear that the Individual has not successfully completed a treatment program or aftercare in accordance with the DOE Psychologist's recommendations because the DOE Psychologist recommended at the hearing that the Individual continue aftercare treatment for longer than the four months he had so far completed, based in part on the Individual's history of relapse and his decision to continue to consume alcohol subsequent to the evaluation. The DOE Psychologist concluded that the Individual had therefore not demonstrated rehabilitation of his UARD. I agree. Furthermore, the Individual has a significant history of engaging in alcohol-related incidents that often result in criminal charges every five or six years, and only approximately a year and a half has passed since he drove home and then to work intoxicated on the day he tested positive for alcohol. I therefore remain concerned that despite his almost six months of reported abstinence he may again engage in problematic alcohol-related behavior. My conclusion is supported by the fact that the Individual remained abstinent, by his own account, for eighteen months before he relapsed after his last DUI in 2017. Eighteen months is significantly longer than his current period of sobriety. Given my above findings and the DOE Psychologist's opinion that the Individual should continue his aftercare program and continue to abstain from alcohol for another six months in order to rehabilitate his UARD, I conclude that the Individual has not demonstrated clear and established pattern of abstinence in accordance with treatment recommendations, nor has he successfully completed a recommended aftercare program.

Accordingly, I conclude that the Guideline G concerns are not resolved.

## **B. Guideline I Considerations**

Under Guideline I, the following relevant conditions can mitigate security concerns associated with a psychological condition:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

I conclude that the record does not justify the LSO's invocation of Guideline I. The allegation contained in the SSC that the Individual had a personality condition or trait that has impaired his judgment, stability, reliability, and trustworthiness was based on the DOE Psychologist's opinion of the same outlined in the Report, but the DOE Psychologist explained at the hearing that the personality condition or trait is not distinct from UARD, and while the Report provides very little explanation for the finding of a personality condition, there is significant evidence that indicates the Individual's UARD significantly impacted his willingness to violate law, rules, and regulations. For example, he violated his employer's rules by testing positive for alcohol at work. He violated the criminal law when he drove himself to work while intoxicated the morning he tested positive for alcohol at work. And he has a significant history of violating the law after consuming alcohol. In other words, the information cited by the DOE Psychologist to support her opinion regarding the Individual's personality condition is the same evidence she used to conclude that the Individual met the criteria for UARD: namely, his violations of laws and rules regarding alcohol use, his lack of candidness around alcohol use, and his resumption of alcohol use after treatment. I also find that the Individual's progress in treatment to address his problematic alcohol use led to the DOE Psychologist concluding that the Individual's personality condition or trait had resolved, but there is no direct evidence in the record that the UARD treatment focused on addressing a particular personality condition or trait. His treatment focused on his problematic alcohol use. I therefore conclude that there is insufficient information in the record to support the conclusion that the Individual had a personality condition or trait distinct from UARD.<sup>4</sup> Accordingly, I conclude that the record does not establish a security concern under Guideline I.

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<sup>4</sup> The SSC did not allege that the Individual's UARD constituted a condition that may impair judgment, stability, reliability, or trustworthiness under ¶ 28(b) of the Adjudicative Guidelines.

### 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 conclude that the Guideline J concerns are not resolved. My reasoning follows.

There are fifteen separate instances of criminal conduct cited in the SSC. Seven of the instances involve alcohol and the remaining eight do not. Of those remaining eight, five instances are resolved under ¶ 32(a) and ¶ 32(c). The most recent of the five is the 2023 "charge" of harassment that resulted from the Individual's interaction with a coach. However, the record does not support that the Individual was ever charged with a crime. Furthermore, the Individual's girlfriend was present and did not see the alleged harassing conduct. And a school representative provided a written statement that the allegations were investigated and unsubstantiated. Therefore, I conclude that the Individual has put forward sufficient evidence under ¶ 32(c) to demonstrate the allegation was based on unreliable evidence. Regarding the remaining four instances, the most recent is the 2014 charge for unlawful hunting or fishing. That instance occurred over ten years prior to the hearing date, the Individual acknowledged the conduct, and there is no evidence that he has been involved in criminal conduct unrelated to alcohol use since then. I similarly conclude the following three instances of criminal conduct are resolved by the passage of time: the 2008 charge for no valid driver's license; the 2007 charges<sup>5</sup> for no registration, license, or insurance; and the 2005 charge for suspended license. These charges relate to operating a motor vehicle without proper paperwork, and given the significant passage of time, I conclude that the conduct is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment.

The following analysis addresses the seven alcohol-related criminal offenses and other three remaining criminal offenses. I first note that ¶ 32(c) applies to resolve the 2015 minor procuring alcohol charge. The record of the charge does not provide any detail and the Individual was beyond

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<sup>5</sup> This incident also included a charge of speeding; however, instead of addressing it separately, I will note here that my rationale for it follows my rationale *infra* for the remaining criminal offenses related to the actual operation of a motor vehicle, separate from licensing, insurance, or registration issues.

the age of majority at that time. Moreover, the Individual denied that he was charged at all. Therefore, the evidence underlying the allegation is unreliable. Turning to the remaining offenses, neither ¶ 32(b) nor ¶ 32(c) applies to resolve them. There is no evidence that the Individual was pressured or coerced into committing criminal conduct, and, aside from a few instances, the Individual does not dispute that he committed the acts identified in the SSC. He does dispute the 2015 DUI, however, his dispute is based merely on the fact that the case was ultimately dismissed. He did not explicitly assert that he was not driving under the influence. Thus, I find that the Individual has not met his burden to demonstrate that the allegations related to his 2015 DUI were based on unreliable evidence.

Regarding the remaining two factors, ¶ 32(a) and ¶ 32(d), the evidence in the record that the Individual has not been charged with an alcohol-related crime since 2017 is offset by the fact that the night before his positive alcohol test in June 2023, he drove home after consuming upwards of thirty beers and then drove to work. Thus, he last engaged in criminal conduct approximately a year and a half ago. Above, I found that the Individual has not yet resolved the concerns related to his alcohol consumption and is at risk of relapse regarding his alcohol use. Accordingly, the passage of time does not indicate the conduct is unlikely to recur. Additionally, the Individual has a significant history of consuming alcohol and deciding to operate a motor vehicle, and the record does not establish that any unusual circumstances contributed to his conduct. So long as the concerns related to the Individual's alcohol consumption remain unresolved, there is significant risk that the Individual will operate a motor vehicle under the influence and violate traffic laws, potentially including speeding and following too close. Given that risk, I conclude he has not provided evidence of successful rehabilitation. Accordingly, ¶ 32(a) and ¶ 32(d) do not apply to resolve the remaining Guideline J security concerns.

## **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 G and Guideline J of the Adjudicative Guidelines but not Guideline I. 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 conclude that the Individual has not brought forth sufficient evidence to resolve the Guideline G and J 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