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

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: November 20, 2024)	Case No.: PSH-25-0034
)	
_____)	

Issued: May 7, 2025

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

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

I. BACKGROUND

The Individual is an employee of a DOE contractor in a position that requires a security clearance. In March 2024, the Individual was arrested and charged with an alcohol-related driving offense. As a result, the DOE Local Security Office (LSO) requested that the Individual respond to a Letter of Interrogatory (LOI) and be evaluated by a DOE-consultant psychiatrist (DOE Psychiatrist) regarding her alcohol use. Based on all of the information gathered by the LSO, including the results of the DOE Psychiatrist's evaluation, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding her eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guidelines E, G, and J of the Adjudicative Guidelines.

The Individual exercised her 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

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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of three witnesses and testified on her own behalf. The LSO presented the testimony of the DOE Psychiatrist. The Individual submitted seven exhibits, marked Exhibits A through H.² The LSO submitted fifteen exhibits, marked Exhibits 1 through 15.³

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 bases for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1.

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, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

. . . .

Id. at ¶ 16.

The SSC cites that the Individual submitted a Questionnaire for National Security Positions (QNSP) in 2015 and 2016 and in both QNSPs she denied consuming any alcohol during a February 2010 incident that resulted in her arrest and charge for domestic violence, but she later admitted to the DOE Psychiatrist in 2024 that she had consumed alcohol prior to the 2010 incident. Ex. 1 at 5. The SSC also cites that, during the psychiatric evaluation, the Individual denied consuming any alcohol after the date of her March 2024 arrest and charge for Driving Under the Influence (DUI),

² Exhibits H and G were submitted after the hearing. Exhibit H is entitled “Medical Docs.pdf” and Exhibit G is entitled “Criminal Docs.pdf.”

³ References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

but she later admitted that she had consumed alcohol after her DUI and was continuing to consume alcohol on weekends. *Id.* The cited information justifies the LSO's invocation of Guideline E.

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 . . .,” “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder . . .,” and “diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, . . .) of alcohol use disorder . . .” *Id.* at ¶ 22(a), (c)–(d). The SSC cites that the DOE Psychiatrist concluded in a June 2024 report (Report) that the Individual met sufficient *Diagnostic and Statistical Manual of Mental Disorders, 5th edition, Text Revision*, criteria for a diagnosis of Alcohol Use Disorder (AUD), Mild. Ex. 1 at 5. The SSC also cites the DOE Psychiatrist’s conclusion that the Individual binge consumed alcohol to the point of impaired judgment, with “no adequate evidence of rehabilitation or reformation.” *Id.* Lastly, the SSC cites the above-referenced alcohol-related criminal charges for DUI in March 2024 and domestic violence in February 2010. *Id.* at 6. 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 cites the following information, which includes the above-referenced alcohol-related criminal charges. Following her 2024 DUI, the Individual was released from custody under a court order that prohibited her from consuming alcohol, however, she admitted that she continued to consume alcohol thereafter. Ex. 1 at 6. In March 2024, the Individual was arrested and charged with DUI and other traffic offenses. *Id.* In February 2015, the Individual was arrested and charged with battery after she bit her brother. *Id.* In August 2010, the Individual was arrested and charged with domestic violence after fighting her boyfriend. *Id.* Lastly, in February 2010, the Individual was arrested and charged with domestic violence after she bit her boyfriend. *Id.* 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

The Individual submitted her first QNSP in 2015. Ex. 14 at 174–75. Therein, she disclosed that she was involved in a domestic violence incident in February 2010 with a former boyfriend in which she was “detained” after defending herself from again him. *Id.* She reported that her former boyfriend was intoxicated at the time of the incident, but she denied that she had consumed any alcohol herself. *Id.* She subsequently reported the same information in a 2016 QNSP. Ex. 13 at 114–15. As revealed below, she later admitted that she consumed alcohol before the February 2010 altercation. Furthermore, a report from the 2010 incident indicates that a police officer responded to the incident and observed that the Individual had a “small cut on the inside of her lip,” which the Individual alleged resulted from being struck with a closed fist, while the Individual’s former boyfriend had “several cuts” on his forehead, neck, and left side of his face, with blood dripping from the cuts and covering his hands. Ex. 15 at 317. The officer determined the Individual was the primary aggressor and arrested her. *Id.*

The Individual also disclosed in the 2015 QNSP that she had another domestic violence incident with her former boyfriend in August 2010.⁴ Ex. 14 at 175. Therein, she stated that, during an argument, her former boyfriend “punched her at least twice with a closed fist, breaking her nose and rupturing her ear drum.” *Id.* She stated that he then told his daughter, who did not observe the physical altercation, to call law enforcement. *Id.* The Individual reported that she was arrested despite suffering injuries, that she was not charged with or convicted of any crime, and the former boyfriend was eventually convicted while she obtained an order of protection against him. *Id.* at 175–76. However, a police report from the incident indicates that the Individual told officers at the time that her former boyfriend did not strike her and, based on the former boyfriend’s report that the Individual hit and scratched his face and their observation of bloody scratch marks on the boyfriend’s neck and face, they arrested the Individual as the primary aggressor. Ex. 15 at 319. Furthermore, additional court records reflect that the Individual reported that the boyfriend broke her nose in a different incident from the one described above. *Id.* at 322.

⁴ She estimated that this incident occurred in 2011, but the record makes clear that it actually occurred in 2010. *See e.g.*, Ex. 15 at 322, 450.

Yet another incident occurred in 2015, when the Individual was involved in a physical altercation with her brother. *Id.* at 315. In a 2024 LOI, she reported that she confronted her brother, who has a criminal history of drug abuse, because he stole her jewelry. Ex. 8 at 42. She was not arrested or charged as a result of the incident. *Id.* (indicating that she was “a suspect only” and the brother decided not to press charges). According to a police report from the incident, the Individual admitted she bit her brother on the leg during their physical altercation in self-defense after being struck first. Ex. 15 at 315.

Most recently, in March 2024, the Individual was stopped by local law enforcement at approximately 10:50 p.m. while allegedly operating a motor vehicle with a headlamp out. Ex. 7 at 28. A police report from the arresting officer stated that the Individual smelled of alcohol and admitted to having a beer, and he subsequently asked the Individual to undergo standardized field sobriety tests during which he observed “multiple signs of impairment.” Ex. 9 at 47. As a result, at approximately 11:30 p.m., the Individual underwent a breath alcohol test, and her first attempt produced a breath alcohol concentration result of “0.08.” *Id.* However, the Individual was reportedly unable to provide a second sample due to health issues. *Id.* The officer arrested and charged the Individual with DUI, improper equipment, and failure to provide proof of insurance. Ex. 7 at 28. The following day, the Individual was released under court order that prohibited her from consuming alcohol. Ex. 10 at 53–54 (Order For Release on Recognizance by Designee).

The Individual provided additional details regarding the night of her 2024 DUI arrest in the LOI. Ex. 8 at 40. She reported that she consumed one sixteen-ounce beer and four ounces of a shared margarita over approximately an hour and a half prior to receiving the DUI. *Id.* She explained that she consumed the alcohol between approximately 5:30 p.m. and 9:30 p.m. and thereafter consumed water. *Id.* at 38. She further explained that during the breath alcohol test, she could only provide one breath sample because she had a recent respiratory illness and chronic chest and lung issues. *Id.* She confirmed that a condition of her release was to “not consume alcohol.” *Id.* at 40. She also stated that she did not intend to consume alcohol until the “matter has been entirely resolved legally[] and also in terms of the DOE investigation.” *Id.* at 45. And she responded “No” to a question in the LOI that asked whether she had ever been charged, arrested, detained, or cited for any additional alcohol-related incidents. *Id.* at 41.

During the June 2024 psychiatric evaluation conducted by the DOE Psychiatrist, the Individual provided more detail regarding her history of alcohol use. Ex. 11. She reported that her time in college, over a decade ago, was a period of her heaviest consumption and she consumed alcohol “excessively at parties.” *Id.* at 58 (noting that her ability to do so was dependent on having sufficient money). The Individual denied having any alcohol related problems prior to her March 2024 DUI. *Id.* She stated that her pattern of consumption since 2011 had been to consume alcohol approximately two weekends per month and at the rate of two alcoholic beverages over three or four hours. *Id.* at 59. She also told the DOE Psychiatrist that she was last intoxicated on a day in October 2023 where she consumed approximately four alcoholic beverages. *Id.* After considering the Individual’s medical history, the DOE Psychiatrist opined that one of her health conditions increased the chance that the Individual will develop liver cancer and that people with that condition “are cautioned to drink alcohol only minimally[] since excessive alcohol consumption will further damage the liver.” *Id.* at 60.

The Individual also told the DOE Psychiatrist that, prior to her February 2010 arrest for domestic violence, she and her former boyfriend both consumed alcohol at a bar, and he became intoxicated while she did not. Ex. 11 at 58–59. Specifically, she reported consuming “a couple of drinks.” *Id.* at 58. She said that they argued on the drive home and her boyfriend hit her in the mouth and she bit him in self-defense. *Id.* The DOE Psychiatrist noted that her reported alcohol consumption contradicted the information she provided in the QNSP where she denied consuming any alcohol prior to the incident. *Id.* at 58.

Regarding the night of the 2024 DUI, the Individual told the DOE Psychiatrist that she “didn’t feel impaired” prior to driving home. *Id.* She also stated that she may have failed the officer-administered field sobriety tests because she has poor balance, stepped on a thorn after the officer instructed her to remove her flip-flops, and could not hear the officer’s instructions regarding how to perform the various tests. *Id.* at 60. The DOE Psychiatrist opined that the Individual’s described alcohol intake of a beer and half of a margarita over four hours on the night of her DUI would have yielded a blood alcohol content of 0.00⁵ g/100 mL by the time of the test of breath, which occurred, conservatively, two hours after her last drink. *Id.* at 57.

The DOE Psychiatrist noted that, when he asked the Individual about whether she was required to abide by any court-ordered restrictions as a result of the DUI, the Individual listed some restrictions but failed to mention any restriction on her alcohol use. *Id.* Then the DOE Psychiatrist asked her specifically about any alcohol restrictions, and the Individual responded “I can’t recall.” *Id.* at 61. Her response is inconsistent with the information she provided in the LOI where she reported that her release conditions prohibited alcohol use. *Id.* at 60; *see also* Ex. 10 at 53 (ordering that the Individual “shall not consume alcohol”).

The Individual told the DOE Psychiatrist that she contacted her employer’s Employee Assistance Program and attended two counseling sessions after the DUI. Ex. 11 at 62. When the DOE Psychiatrist asked her about her current alcohol use, the Individual first denied consuming alcohol after the DUI, but she later disclosed that she occasionally consumed two beers with dinner on weekends and last consumed alcohol twelve days prior to the evaluation. *Id.* The DOE Psychiatrist noted that the Individual’s reported consumption was inconsistent with her previous statement in the LOI that she intended to refrain from alcohol use until her DUI had been entirely resolved. *Id.* at 63.

The DOE Psychiatrist diagnosed the Individual with AUD, Mild, based on several factors in addition to her recent DUI, including that she had minimized her alcohol use, continued to consume alcohol despite possessing a medical condition that is negatively impacted by alcohol use, failed to follow her assurance in the LOI that she would refrain from alcohol use, and failed to follow her release conditions. *Id.* at 66. He also opined that the Individual binge consumed alcohol based on the fact that she consumed alcohol on the night of the DUI to a level of .08, and she demonstrated impaired judgment by subsequently driving her vehicle. *Id.* at 67 (noting that he addressed the issue of binge consumption “briefly” because he had already determined that she “suffers from the more serious and better-defined problem of [AUD] . . .”). The DOE Psychiatrist recommended that the Individual could demonstrate rehabilitation or reformation by maintaining

⁵ All future references to blood alcohol content in relation to breath tests will omit reference to the unit of measurement, which is grams of alcohol per 100 ml blood or g/100 mL. Ex. 11 at 64, 67.

sobriety for at least a year and undergoing outpatient treatment, such as Alcoholics Anonymous or individual counseling. *Id.*

Prior to the hearing, the Individual underwent five PEth tests, one in each of the following months: October 2024, November 2024, January 2025, February 2025, and March 2025.⁶ Ex. A. All five test results were negative. *Id.* The record also includes counseling treatment records from January 2025 to February 2025. Ex. B. The counseling notes indicate that the Individual told the counselor that she did not consume alcohol in college because she was too busy with three jobs. *Id.* at 10.

At the hearing, the Individual's former colleague testified on the Individual's behalf. Transcript of Hearing, OHA Case No. PSH 25-0034 (Tr.) at 13. The former colleague stated that the Individual was always professional and a good team leader despite working in a challenging environment. *Id.* at 14, 19. The former colleague never saw any indication the Individual had an alcohol problem. *Id.* at 21–22. Another former colleague also testified that the Individual is reliable, thorough, and demonstrated high integrity. *Id.* at 37–49. The second former colleague testified that he spent time with the Individual socially and had observed her typically consume no more than two alcoholic beverages at a time. *Id.* at 41. Lastly, the Individual's longtime friend and roommate of eight months testified that the Individual lives a very healthy lifestyle, he has never observed any indication that she has an alcohol use problem, and he has observed her working hard to address the security concerns related to her DUI, including attending counseling. *Id.* at 48–52, 54–55.

At the hearing, the Individual testified that she stopped all alcohol consumption on August 18, 2024, because she received a “leave of absence letter” from her employer as a result of the concerns regarding her DUI and alcohol use. *Id.* at 64–65. The Individual explained that she then decided to undergo PEth testing and underwent an assessment for entry into an intensive outpatient program (IOP) based on the DOE Psychiatrist's recommendations and the advice of legal counsel regarding how best to address the concerns raised in the SSC. *Id.* at 66–67.

The Individual explained that she reported in the LOI that she had complied with the terms of her release despite violating the prohibition against alcohol consumption because she was very flustered when she received the release instructions and her inaccurate LOI response was an honest mistake. *Id.* at 69. The restrictions were lifted in June 2024. Ex. C at 34 (Order dismissing the DUI charges in late June 2024). She testified that she had only consumed alcohol approximately four or five times from the time of her March DUI to August 18, 2024, which was consistent with the frequency of her consumption prior to the DUI—consuming two alcoholic beverages over the weekend once or twice a month. Tr. at 71–72. As for why her alcohol breath test result was .08 despite her self-described consumption of one-and-a-half alcoholic beverages over several hours after dinner, the individual explained that her lack of a particular organ caused her to “metabolize[s] things completely different . . .” *Id.* at 74.

The Individual stated that during the evaluation she made clear to the DOE Psychiatrist that she could not really remember the amount of alcohol she consumed during the February 2010 incident. *Id.* She testified that she reported consuming two beers because it was her typical pattern of alcohol consumption at the time. *Id.*

⁶ The October through February tests occurred every six weeks. Ex. A at 1–8. The March test was taken three weeks after the February test, which was two weeks before the hearing. *Id.* at 6–7.

The Individual also testified that she did not intend to mislead the DOE Psychiatrist when she initially denied consuming alcohol after her DUI; she recalled explaining instead that while she did not initially consume alcohol after the DUI, she later consumed alcohol on a couple of occasions. *Id.* at 84. As for her statement in LOI that she would refrain from consuming alcohol until the court case and security concerns were resolved, she testified that she should have instead stated that “if DOE or someone else determined that alcohol was a problem and that [she] needed to mitigate[,]” then she would have no problem stopping. *Id.* at 86.

The Individual testified regarding her counseling and other steps she had taken since the evaluation. The Individual testified that the counselor concluded that she had issues related to trauma from domestic violence instead of alcohol use issues. *Id.* at 91. She confirmed that she had since been receiving counseling treatment unrelated to alcohol use. *Id.* at 95–96. She underwent an IOP assessment at a recovery center and the recovery center determined that she did not have an alcohol use disorder. *Id.* at 97–99. The Individual testified that her statements to the recovery center and the DOE Psychiatrist regarding her alcohol use in college were not contradictory because both answers consistently stated that she consumed alcohol occasionally because of financial constraints. *Id.* at 103. The Individual testified that she was focused on continuing trauma-related treatment with her counselor, remaining abstinent, and making better decisions. *Id.* at 107.

Lastly, the Individual provided testimony regarding her history of criminal charges. Regarding the citations for improper equipment and failure to provide proof of insurance she received on the night of the DUI, the Individual testified that the vehicle was rented by her automobile insurance company and she handed the officer the rental paperwork from the glovebox, which included a notice of insurance. *Id.* at 110, 125. The record includes a picture of a document in the vehicle identified as “automobile self-insurance.” Ex. E at 75. She also provided an email communication from the rental car company that did an inspection of the vehicle after it was retrieved subsequent to the DUI, and the inspection did not discover any issues with the headlamps. *Id.* at 72–73.

Regarding the 2015 domestic violence incident with her brother, she testified that he stole a number of items from her, she confronted him, he physically attacked her, and she defended herself. Tr. at 115. She testified that she did not press charges against her brother for the theft and she keeps her distance from him because she does not want to be involved in any more difficult situations. *Id.* at 116.

Regarding the domestic violence in February 2010, the individual testified that her former boyfriend attacked her after being disrespectful toward her. *Id.* at 118. She testified that she only bit him after he attempted to strangle her. *Id.* at 119. She testified that ten years had passed since her last domestic violence incident, which represents a significant period of time. *Id.* at 121.

The DOE Psychiatrist testified that, based on the clinical evidence of abstinence over the seven months preceding the hearing, the Individual met the diagnostic criteria for AUD, Mild, in early remission. *Id.* at 146. The DOE Psychiatrist also testified that the Individual’s testimony was consistent with her tendency to minimize or deny the problems that alcohol had caused the Individual. *Id.* at 149. He testified that the Individual’s counseling did not address alcohol use and

therefore did not meet the recommendation he outlined in his Report. *Id.* He further testified that the Individual's demonstrated abstinence represented a "good start" and balanced it against other "negative factors," including that she did not acknowledge her problematic alcohol use, minimized or denied past symptoms, and had not yet undergone treatment for the alcohol use. *Id.* at 154–55. Consequently, the DOE Psychiatrist opined that the Individual had a "fair" or "medium" prognosis with regard to her sobriety. *Id.* at 156. He also opined that the Individual's alleged metabolic issues would not impact the concentration of alcohol in her blood for the purposes of a breath alcohol test. *Id.* at 161. He explained that, even if she metabolized alcohol at a slower rate than a similar person without her condition, the height of the concentration would still be the same based on the same rate of consumption; thus, assuming she is correct about her metabolism, she still would have had to consume sufficient alcohol to reach a "[blood alcohol content] of .08." *Id.*

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. I first conclude that ¶ 17(a) does not apply to resolve the concerns. Regarding the Individual's failure to disclose her consumption of alcohol at the time of the February 2010 domestic violence incident, over eight years passed from the time she omitted the information from her first QNSP to her relatively recent disclosure during the psychiatric evaluation. And, during that period, she again omitted the information in her LOI. Thus, her eventual disclosure of the information was not prompt. I turn next to the allegation that during the psychiatric evaluation she initially denied and then admitted that she had consumed alcohol after the DUI and prior to the psychiatric evaluation. I find that her disclosure was prompt since it occurred during the same evaluation. I also find that she made the disclosure before she was confronted with any facts regarding her alcohol use because there is no evidence to establish otherwise. However, her explanation for why she disclosed the alcohol use weighs against a finding that it was done in good faith. Instead of acknowledging that her initial denial was misleading, she contended that she expressed uncertainty when describing her alcohol use to the DOE Psychiatrist, and she intended to communicate that she initially stopped and then later resumed consuming alcohol. In other words, she blamed the DOE Psychiatrist for not accurately interpreting her statements and, in essence, denied that she omitted or provided misleading information. However, the Individual had a clear motive to deny consuming alcohol during the evaluation, and there is no indication in the Report that indicates she was anything but clear in her denial. I therefore do not find her explanation credible. My conclusion is also based in part on the substantial evidence in the record that further undermines the Individual's credibility regarding her reported alcohol use, discussed in detail below under ¶ 17(c) and ¶ 17(d). Given my concerns regarding her credibility and the fact that she currently denies that she omitted or provided misleading information during the evaluation, I conclude that she did not provide the information regarding her alcohol use during the evaluation in an honest attempt to correct her previous denial. Instead, it seems likely that she merely provided an answer that was inconsistent with her prior denial. In other words, she did not disclose her alcohol use in an honest attempt to "correct" the misleading information she previously provided. I therefore conclude that she did not promptly correct her previous denial in good faith.

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.

Paragraph 17(c) and ¶ 17(d) do not apply to resolve the concerns for the following reasons. First, the offenses are not minor. There is substantial evidence to establish that the Individual likely omitted derogatory information from the QNSP and intentionally provided false information during the psychiatric evaluation. I do not find credible the testimony she provided to explain her concerning behavior. For example, I am not persuaded by her explanation that, during the 2024 psychiatric evaluation, she just assumed she consumed the same level of alcohol consistent with her pattern in 2010. If that was the case, it seems likely that she would have disclosed the information for the same reasons at the time she completed the QNSPs because she completed them closer in time to the 2010 incident than the psychiatric evaluation. The credibility of her

explanation is also undermined by the fact she also failed to report the alcohol consumption when completing the LOI, which represents another instance of omitting information from a security form. Furthermore, she denied recalling that her release conditions prohibited alcohol consumption during the psychiatric evaluation but disclosed the prohibition when completing the LOI, which indicates that she again provided false information to the DOE Psychiatrist regarding her alcohol use. I do not find her testimony credible that she just forgot that restriction when it seems more likely that she denied knowledge of it because she did not want to admit that she had violated it. Further still, the records from her counseling treatment provider indicate that she denied consuming alcohol in college but told the DOE Psychiatrist that that period was a time of heavy consumption. The contradiction raises the concern that the Individual denied the period of heavy alcohol use during the counseling assessment to obtain a more favorable opinion. Finally, the Individual's assertions regarding the circumstances of her DUI are not credible. She has continued to maintain that the amount of alcohol she consumed over the several hours preceding her DUI could have produced a .08 blood alcohol concentration while simultaneously asserting that she did not feel the effects of alcohol and providing several excuses for why she failed the field sobriety tests. However, her attempt at explaining away her difficulty in completing the field sobriety tests corroborates the officer's report that she did in fact show signs of impairment. Furthermore, her explanation for the .08 is undermined by the DOE Psychiatrist's explanation that her ability to metabolize alcohol would not explain her test result, which leads me to conclude it is likely that the Individual consumed more alcohol than she reported. Her field sobriety test results corroborate the result of her breath test, and both weigh against finding that her testimony surrounding the circumstances of the DUI is credible. I thus remain concerned regarding the Individual's credibility and reliability regarding alcohol use, and I accordingly conclude that the Individual has not demonstrated that the concerns derived from her conduct are mitigated by the passage of time or by the infrequency or circumstances of the conduct. Furthermore, in reference to ¶ 17(d), even though the Individual acknowledged that she omitted information in the QNSP and provided an explanation for her behavior during the psychiatric evaluation, she has not obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to her untrustworthy and unreliable behavior such that it is unlikely to recur. As demonstrated by my above analysis, she continues to provide unreliable information and therefore I find that the concerning behavior is not unlikely to recur. Therefore, ¶ 17(d) does not apply to resolve the concern.

The remaining conditions do not apply to resolve the Guideline E concerns 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 her 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 not apply to resolve the concerns because they are not based on the Individual's association with persons involved in criminal activities.

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. However, I first note that the allegation in the SSC that the Individual binge consumes alcohol to the point of impaired judgement is not supported by the record. This allegation is based on the DOE Psychiatrist's opinion, but that opinion is based on a single instance of the Individual consuming enough alcohol to reach .08 on the night of her DUI. I conclude that that single incident, standing alone, without any reliable evidence as to how much alcohol or how many alcoholic beverages the Individual consumed over the several hours before her DUI, is insufficient to present a security concern under Guideline G.

Regarding the remaining allegations, 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. None of the elements in ¶ 23(a) are met because I conclude, based on the record and DOE Psychiatrist's opinion, that the Individual has not yet resolved the concerns derived from her problematic consumption of alcohol. Given that the conduct is unresolved, and she is therefore at risk regarding relapse, I do not find that ¶ 23(a) applies to resolve the concerns.

I further conclude that that ¶ 23(b), ¶ 23(c), and ¶ 23(d) do not apply to resolve the concerns for the following reasons. The Individual has not accepted the diagnosis of AUD or acknowledged that alcohol use has presented a problem in her life other than being, in her opinion, wrongfully arrested for DUI and suffering the consequences that resulted therefrom. Furthermore, the record is clear that the Individual is not currently participating in a counseling or treatment program to address her alcohol use or AUD, and she has not successfully completed a treatment program or aftercare. The DOE Psychiatrist and the counseling records confirm that the Individual is not receiving treatment to address her alcohol use. Therefore, even though the Individual has presented evidence that she has remained abstinent for approximately seven months, which is less than the

recommended year, she has not done so 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 first conclude that ¶ 32(c) applies to resolve the concerns associated with the criminal charges for failure to show proof of insurance and improper equipment. The Individual presented strong evidence that the headlamp was not malfunctioning because the rental car company specifically checked and confirmed that they operated properly. Thus, I find it very unlikely that one of the headlamps was out when the Individual was stopped by the officer. Furthermore, the Individual provided evidence that she gave the officer the rental insurance paperwork from the rental car company. Thus, I conclude the evidence supporting these two charges is not reliable and the Individual has therefore mitigated the concerns related to these two charges.

However, turning to the more significant criminal charges, I first conclude that ¶ 32(a) and ¶ 32(d) do not apply to resolve the remaining concerns. Less than a year had passed between the DUI and the hearing, and, even more recently, the Individual violated the terms of her release by consuming alcohol without any explanation other than she forgot about the prohibition. Thus, a relatively short period of time has elapsed since she engaged in criminal behavior. I further find that the record does not establish any unusual circumstances surrounding the DUI or her violation of the release order. She has not carried her burden to establish that her DUI resulted from anything other than consuming sufficient alcohol to demonstrate impairment during field sobriety tests and to produce a blood alcohol concentration of .08. Furthermore, I reject her proffered lapse in memory as an explanation for why she failed to comply with the terms of her release order. As I concluded under Guideline E, I find that the Individual's testimony regarding her conduct in relation to alcohol use is unreliable. Further still, both above instances of criminal conduct are related to the Individual's alcohol use, and based on my above findings that her AUD is not yet resolved, I therefore conclude that substantial evidence weighs against finding that her criminal behavior is unlikely to recur or

that there has been successful rehabilitation. The DOE Psychiatrist opined that there is a fair or medium chance of relapse, and therefore the Individual is at risk for repeating her alcohol related criminal conduct.

Lastly, I find that the Individual's domestic violence incidents, though they occurred over ten years ago, remain unresolved because the Individual continues to provide questionable testimony regarding the reason for her criminal conduct. For example, I do not find it credible that her former boyfriend broke her nose during the August 2010 incident given that she was arrested after the officers observed both her and her boyfriend that day and observed injuries to the boyfriend, the Individual denied being hit, and she subsequently reported that her nose was broken a different month. While her former boyfriend may have injured her on a different date, the record undermines the credibility of her testimony that she, instead of her former boyfriend, was the victim in August 2010. I therefore conclude that ¶ 32(a) and ¶ 32(d) do not apply to resolve the remaining Guideline J concerns.

Turning to the remaining factors, I find that ¶ 32(b) and ¶ 32(c) do not apply to resolve the Guideline J concerns because there is no evidence that the Individual was pressured or coerced into committing the acts, and, as made clear by the above analysis, there is reliable evidence that the individual committed the offenses.

Accordingly, I conclude that the Individual has not resolved the Guideline J concerns other than those related to the two citations for failure to maintain equipment and failure to provide proof of insurance.

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 has not brought forth sufficient evidence to resolve the Guideline E, G, and J security concerns. 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.

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