*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
	)	
Filing Date: March 28, 2025	)	Case No.: PSH-25-0099
	)	
	)	

Issued: May 30, 2025

Administrative Judge Decision

Andrew Dam, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (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 holds access authorization in connection with his employment with a DOE contractor. Exhibit (Ex.) 2 at 11.[2] The Individual in September 2024 went to a bar alone for dinner and had approximately eight alcoholic drinks from around 6:30 p.m. or 7:00 p.m. to 11:00 p.m. Ex. 7 at 153. At around 11:30 p.m., the police observed the Individual swerving in his vehicle, pulled the Individual over, and arrested the Individual under suspicion for "DRIVING UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE" (DUI). *Id.* at 155–56 (formatting in original). The Individual self-reported his DUI arrest to the LSO. Ex. 9 at 167–70.

The LSO referred the Individual for a psychiatric evaluation with a DOE consultant psychiatrist (DOE Psychiatrist) in December 2024. Ex. 5 at 132–45. Following the evaluation, the DOE Psychiatrist issued a report (DOE Psychiatrist's Report). *Id*. The DOE Psychiatrist ultimately

[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 Local Security Office (LSO) combined Exhibits 1–10 into a single PDF workbook. This Decision references to these exhibits by the exhibit number and the PDF page number. The LSO sent Exhibit 11 as a separate PDF.

opined that the Individual binge consumed alcohol to the point of impaired judgment. *Id*. at 139–40. He concluded at the time of the evaluation that the Individual had not demonstrated adequate evidence of rehabilitation and reformation. *Id.* at 141.

Based upon the DOE Psychiatrist's Report and the DUI, the LSO subsequently issued to the Individual a Notification Letter advising him that it possessed reliable information creating substantial doubt regarding his eligibility for access authorization. Ex. 2 at 11–15. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines. *Id.* at 14–15. The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1 at 3–4. 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 eleven exhibits (Ex. 1–11). The Individual submitted fourteen exhibits (Ex. A–N).[3] Neither party objected to the admission of the exhibits into the record. Hearing Transcript, OHA Case No. PSH-25-0099 (Tr.) at 8. The Individual testified on his own behalf and offered the testimony of three additional witnesses: Coworker 1, Coworker 2, and Coworker 3. *Id.* at 3. The LSO offered the DOE Psychiatrist as its sole witness, and the Individual, through counsel, stipulated to the DOE Psychiatrist's expertise in psychiatry. *Id.* at 3, 8.

II. THE SECURITY CONCERNS

The Notification Letter included the SSC, setting forth the derogatory information raising concerns about the Individual's eligibility for access authorization. The SSC specifically cites Guideline G. Ex. 2. Guideline G relates to security risks arising from excessive alcohol consumption: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern under Guideline G include "alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder" and "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" *Id.* at ¶ 22 (a), (c). In citing Guideline G, the LSO relied upon the Individual's September 2024 DUI and the DOE Psychiatrist's conclusion that the Individual binge consumed alcohol to the point of impaired judgment and had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 2 at 14–15. There is sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G.

[3] The Individual submitted Exhibits A–J as a single PDF with page numbers in the top right corner of each page. This Decision references Exhibits A–J by their exhibit letter and the page number located in the top right corner. The Individual submitted Exhibits K–N as a separate PDF, each exhibit containing different internal page numbers. This Decision references Exhibits K–N by their exhibit letter and the page number in the order in which the page appears in the PDF.

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 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).

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

IV. FINDINGS OF FACT

a. Individual's Background, Pre-September 2024 Drinking Habits, and the September 2024 DUI

The Individual has worked with the current DOE contractor since 2004. Ex. B at 3; *see also* Tr. at 59. The Individual described his performance as "excellent" and provided his employment records documenting his positive performance reviews from 2018 to 2024. Tr. at 60; Ex. C at 5–46. He also submitted awards and recognitions that he received at work for his contributions. Ex. D at 47–54; Tr. at 60–64. Corroborating testimony from his witnesses also describes the Individual in complimentary terms. *See e.g.* Tr. at 19 (Coworker 1 describing the Individual as "one of the hardest working and most knowledgeable people"), 33 (Coworker 2 describing the Individual as "very good at his job" and "a smart guy"), 45 (Coworker 3 describing the Individual as "helpful" and his "work ethic" as "fantastic"); *see also* Ex. E at 55–66 (twelve letters from colleagues and friends generally advising on the Individual's positive character). The Individual testified that, prior to this administrative proceeding, he had no issues with holding his access authorization. Tr. at 64.

The Individual met his ex-wife in 2015, and they bought a house together in 2016. Ex. 5 at 137; *see also* Tr. at 68–69. The Individual disclosed that, while they were living together, he "consume[d] [alcohol] twice a week" and that "she drank alcohol daily." Tr. at 68–69. He testified that he felt some pressure to increase his drinking since his ex-wife "felt like she was doing things alone." *Id.* at 69. Eventually, they married in 2019 but separated during the COVID-19 pandemic in 2020. Ex. 5 at 137. They officially divorced in 2023. Ex. 10 at 137; Tr. at 69.

The Individual's alcohol consumption [s]ince the "Covid shutdowns" increased to approximately three to four times per week "[a]t home and also at a local bar/restaurant." Ex. 7 at 153; *see also* Ex. 5 at 134 (DOE Psychiatrist's Report indicating that the Individual "reported that, prior to the COVID-19 pandemic restrictions, his frequency of alcohol consumption was two to three times a week rather than the three to four times a week that occurred after the pandemic . . ."); Tr. at 104. When asked how much he drank on work nights, he estimated one to four drinks. Ex. 9 at 168; *see also* Ex. 7 at 153. When asked how much he drank when not working the next day, he estimated six to eight drinks. Ex. 9 at 168.

He also estimated that he drank to the point of intoxication "once every couple of months at home"—defining his point of intoxication as when he experienced "[d]ouble" or "[b]lurred [v]ision[.]" Ex. 7 at 153; *see also* Ex. 9 at 168. However, he acknowledged that sometimes he drank to the point of intoxication outside of the home. *See* Ex. 5 at 135 (DOE Psychiatrist's Report documenting the Individual's admission that "[a]pproximately four times a year, he consumes six to eight drinks . . . over four hours to the point of intoxication, *primarily at home*") (emphasis added). *But see* Tr. at 121–22 (Individual testifying, "I don't believe so" when asked if he had more than four drinks outside the home prior to the September 2024 DUI). When asked why he habitually drank alone at home, the Individual could not provide a specific answer:

> It'd be generally a day where I'm not doing anything or just doing laundry, and one thing would lead to another. I'd . . . have a couple drinks and have a couple more and then that's how the night would go.
> . . . .
> It's not like I'm [] sad or upset or anything like that. It's just. I don't know, maybe I felt like I was social with myself . . . . I don't have a good answer for you.

Tr. at 106. The Individual admitted that, when he drank at a bar or restaurant, he consumed "closer to four" alcoholic drinks and testified that, when he would have "three to four drinks over a couple" of hours, he believed himself not impaired and able to drive home. *Id.* at 107, 21. He also testified that he "never really gave" his pattern of alcohol consumption "all that much thought prior to the September 2024 DUI and his alcohol use "wasn't a problem until that evening." *Id.* at 70, 124. The Individual's witnesses generally reported that, prior to the Individual's DUI, they only observed him drinking socially and never in excess. *Id.* at 21 (Coworker 1 testifying the Individual would not drink at all at Christmas parties or when golfing), 46–47 (Coworker 3 testifying that he had not ever seen the Individual heavily intoxicated at social events).

On the night of the September 2024 DUI, the Individual went out to a restaurant at around 6:30 or 7:00 p.m. to watch a televised sport event and to have dinner. Ex. 7 at 153; Ex. 8 at 164; Tr. at 107–08. Over the course of the sporting event and dinner, the Individual proceeded to consume eight mixed drinks until approximately 11:00 p.m. Ex. 7 at 153; Ex. 8 at 164. The Individual left the restaurant in his car, and a police officer pulled him over at about 11:30 p.m. that night. Ex. 7 at 153; Ex. 8 at 164.

Arrest records reflect that the officer observed the Individual "blankly staring"; "a strong odor of an alcoholic beverage"; and the Individual "ha[ving] a difficult time comprehending instructions

and answering questions . . . ." Ex. 7 at 157. "[D]ue to his extreme state of intoxication," the officer concluded that the Individual "could barely stand up" to safely complete field sobriety testing. *Id*. Accordingly, the officer arrested the Individual for a DUI and brought him to a hospital for a blood test. *Id.* The Individual's blood alcohol content (BAC) was .201. Ex. 4 at 131; Ex. J at 97. At the hearing, when asked why he drank more than usual on this occasion, he could not provide a specific explanation—though he acknowledged fault. Tr. at 122 (testifying "I wish I had a good answer for you. I really do . . . . I'm not making excuses . . . . I put myself in a bad spot[,] and I ended up with a bad result").

b. Post-September 2024 Abstinence, Court Proceedings and Programs Related to the September 2024 DUI, and Individual's Related Testimony

The Individual represents that, of his own volition, he began abstaining from alcohol after the September 2024 DUI. Ex. 5 at 135; Ex. 7 at 153; Tr. at 71. The record includes several corroborating tests, including (1) a negative Phosphatidylethanol (PEth)[4] test from a December 2024 blood sample, detecting "no [ ] substantial or heavy alcohol consumption during the prior month[,]" or since November 2024; (2) a negative Ethyl Glucoronide test from a March 2025 hair sample, supporting his claim of alcohol abstinence for a three-month period,[5] or from December 2024 to March 2025; and (3) a negative PEth test from an April 2025 blood sample, demonstrating the absence "of moderate to heavy ethanol consumption" during the prior month, or since March 2025. Ex. 5 at 139, 45; Ex. F at 67–68. He testified that he has no alcohol-related withdrawal symptoms or cravings and feels no pressure to drink alcohol when it is in his presence in social settings. Tr. at 71–72. His witnesses corroborated this, noting that the Individual abstained from drinking in social settings. *See, e.g., id.* at 54 (Coworker 3 testifying that he observed the Individual at a bar restaurant where alcohol was present and that the Individual abstained from drinking).

Regarding his DUI charge, the Individual, with permission from the sentencing court, entered into the county's pretrial diversion program in February 2025—wherein the Individual agreed to "complete[ ] a required period of probation and participation in appropriate safe driving and alcohol counseling programs" so that his first-time DUI charge "would be removed from his[ ] public Criminal History Record . . . ." Ex. J at 97, 99. The pretrial diversion program required that he complete (1) "12.5 hours of DUI Intervention Therapy"; (2) "12.5 hours of Alcohol Highway Safety School"; and (3) three Alcoholics Anonymous (AA) meetings. *Id.* at 95–96; Tr. at 73, 78. The Court also required a six-month suspension of the Individual's license, one year of probation, and one year of alcohol abstinence. Ex. J at 97; Tr. at 102. The Individual completed DUI Intervention Therapy and the Alcohol Highway Safety School in February 2025 and April 2025, respectively. Ex. J at 100–01.

[4] "PEth blood testing [is] performed . . . for alcohol use within the prior month." Ex. 5 at 139. "PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption." *Id.* at 145.

[5] The hair follicle test was completed by a Labcorp laboratory whose website reflects that "[h]air follicle . . . testing offers up to a 90-day window for detection of drug use . . . ." Labcorp, *Hair Drug Testing*, https://www.labcorp.com/organizations/capabilities/employee-testing-wellness/pre-employment-drug-testing/hair-drug-testing#accordion-58ac5ad4e2-item-d6a51266a7 (last visited May 7, 2025).

The 12.5 hours of "DUI Intervention therapy" consisted of four sessions. Tr. at 77. The Individual described the sessions as a "group talking" over "different issues"[6] regarding alcohol and substance use. *Id.* at 77. The Individual explained that the program provided no "one[-]on[-]one" therapy sessions. *Id.* at 126. The Individual had no knowledge regarding the professional qualifications of the person leading the group sessions. *Id.* ("I don't know technically what the individual['s] credentials were . . . . I don't know if you would call them a specialist . . . or something like that.").[7] He testified to learning from the program that a "DUI isn't just alcohol [consumption] over a .08" BAC but that a person "can have one beer and . . . if a police offer determines [the person is] unsafe to operate a vehicle" the person could "get charged." *Id.* at 97.

The Individual attended the three court-mandated AA meetings and testified to attending 15 AA meetings in total. Tr. at 82. The Individual submitted proof of attendance four times in February 2025, six times in March 2025, and three times in April 2025. Ex. I at 79–91. From the AA meetings and listening to others' stories, the Individual testified that he learned, regarding alcohol use, "none of it's really good" and "[t]here's no positive" to drinking. Tr. at 83. He plans to continue attending AA sessions since he "like[s] to learn and listen to people . . . ." *Id.* at 98. When asked how the 12 steps in AA might assist him, in particular, the Individual acknowledged that the "first step" is "acknowledging a level of powerlessness over alcohol" but testified that he "never felt powerless over alcohol." *Id.* at 98–99. Regarding his future alcohol use, the Individual testified, "I don't want to sit here and say that five, 10[,] or 15 years from now[,] I [w]on't toast somebody at a graduation or a wedding or something like that, but I plan to stay abstinent." *Id.* at 85. The Individual further testified that he no longer keeps any alcohol in his home. *Id.* at 115. With respect to lessons learned from his DUI, the Individual reflected that, "[y]ou always have to keep your guard up." *Id.* at 118.

c. DOE Psychiatrist's Evaluation, Recommendation, and Related Testimony

At the request of the LSO, the Individual met with the DOE Psychiatrist in December 2024. Ex. 5 at 132.[8] As part of the psychiatric evaluation, the DOE Psychiatrist (1) reviewed the personnel

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[6] The program's website indicates that the following topics are covered: "Drug and alcohol education"; "[State] DUI laws and consequences"; "Physical and mental effects"; "[r]elationship and family issues"; "[e]conomic and financial effects"; "[e]nvironmental, social, and media influences"; "[e]xploring stages of change"; "[r]educing stress"; "[m]anaging anger"; and "[r]eferrals and support services." Ex. N at 24.

[7] The relevant state statute provides the following:

> DUI program coordinators shall either possess a bachelor's degree with a major in business administration, business management, chemical addictions, criminal justice, public administration, psychology, social sciences, social work, sociology, education, or a closely related field, or be able to demonstrate at least 2 years of related management or administrative experience, or be able to demonstrate a suitable combination of education and relevant experience . . . .

Ex. M at 20. Accordingly, it appears there is no legal requirement that the persons leading the group sessions have specific licensing or certification in mental health treatment.

[8] The DOE Psychiatrist's Report mis-states that the evaluation occurred in September 2024; at the hearing, the DOE Psychiatrist clarified that the evaluation took place in December 2024 and that this was a typographical error. Ex. 5 at 1; Tr. at 132.

security documentation and investigation materials, (2) conducted a psychiatric interview, and (3) reviewed a chain-of-custody PEth test result from the Individual. *Id.* at 133. During the psychiatric interview, the Individual recounted the frequency of his drinking and the circumstances surrounding his DUI, as described above in Section IV(a). *Id.* at 134–35. He also indicated that he had abstained from alcohol use since the night of the September 2024 DUI. *Id.* at 135 (reporting to the DOE Psychiatrist that "[s]ince the alcohol DUI offense, he has not returned to the bar nor obtained alcohol"). As stated above, a negative PEth test detected "no [ ] substantial or heavy alcohol consumption during the prior month[,]" or since November 2024. *Id.* at 139, 45.

The DOE Psychiatrist noted the absence of alcohol use disorder symptoms, except increased tolerance, during the Individual's clinical interview: "The [Individual] denied signs and symptoms of alcohol use disorder [over his] lifetime except for the development of alcohol tolerance. In that regard, he does not experience alcohol intoxication after consuming four drinks but needs approximately six to feel intoxicated." *Id.* at 135–36. During the hearing, the DOE Psychiatrist testified that the Individual, during the clinical interview, "did not seem to feel that he had an alcohol problem at any time." Tr. at 134. He further testified that "[t]here were some occasions in which" the Individual "self-medicat[ed] anxiety with alcohol" and opined that the Individual did not seem "very insightful about [this]." *Id.* at 137.

Based upon the above, the DOE Psychiatrist found that he could not diagnose the Individual with an alcohol use disorder pursuant to the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 5 at 139.[9] However, the DOE Psychiatrist found that the Individual (1) "demonstrated binge consumption of alcohol approximately four times a year"—defining binge consumption as the "consumption of five or more drinks per single day . . . within approximately two hours"[10]—and (2) "demonstrated significantly impaired judgment in his decision to drink alcohol and then drive home alone on the occasion of his alcohol DUI offense."[11] *Id.* at 139–40. The DOE Psychiatrist's Report concluded that the Individual's "prognosis with regard to the occurrence of future binge consumption of alcohol . . . or even high intensity drinking[ ] is negative or at least uncertain" given that this "has been his drinking history for at least the last three years" and that "he has not had any alcohol treatment or attempts at rehabilitation, reformation, or recovery." *Id.* at 141. The DOE Psychiatrist recommended that the Individual might rehabilitate or reform from his alcohol use issues by (1) abstaining from alcohol use for one year and (2) "participat[ing] in professional alcohol treatment for at least one year . . . ." *Id.* at 142.

In February 2025, the LSO provided the Individual with the DOE Psychiatrist's Report. Ex. 2 at 11, 13. The Individual testified that he "assumed that anything that was dictated from the court would" have satisfied the DOE Psychiatrist's recommendation that he participate in professional

[9] The DOE Psychiatrist acknowledged that he based the lack of diagnosis "upon [the Individual's] self-report and [that it] could be inaccurate." Ex. 5 at 139.

[10] The DOE Psychiatrist acknowledged that, while there exist several ways to define binge drinking, "there is no psychiatric diagnosis of binge drinking" and while definitions have changed over time, "five drinks in two hours is the more recent criteria" used in the United States. Tr. at 139–40.

[11] The DOE Psychiatrist noted that the Individual "had not demonstrated significantly impaired judgment over the years in previously drinking and driving by his report though this [wa]s not corroborated." Ex. 5 at 139.

alcohol treatment. Tr. at 164; *see also id.* at 128. However, at the hearing, the DOE Psychiatrist clarified that the pretrial diversion programs and the Individual's AA attendance were "not really treatments" and were instead "interventions" or "educational" in nature. *Id.* at 150. The DOE Psychiatrist further clarified that his recommendation for professional alcohol treatment meant "professional treatment" from a "trained, licensed mental health professional"—which unlike the pretrial diversion programs and AA—typically involved "one-to-one sessions . . . ." *Id.* at 150–51. Specifically, "professional treatment . . . would help [the Individual] develop more insight, understanding, [or] appreciation . . . of his alcohol use over the years" and would aid in "relapse prevention" by addressing the reason behind his drinking. *Id.* at 153–54 (DOE Psychiatrist expressing "concern [that] there was a lot of . . . solitary drinking . . ." which presented an "issue for [a] therapist to review with him").

After listening to the Individual's testimony at the hearing and reviewing the Individual's submitted exhibits, the DOE Psychiatrist still "recommend[ed] that the [the Individual] participate in professional treatment." *Id.* at 149–50. The DOE Psychiatrist acknowledged the Individual's trajectory as good—insofar as the Individual had pursued alcohol interventions, abstained from alcohol, and complied with court requirements; however, he gave the Individual a "favorable" but "conditionally uncertain[ ]" prognosis given the absence of mental health treatment. *Id.* at 161–62. Upon hearing the DOE Psychiatrist's recommendation and testimony, the Individual testified that he (1) now better understood the DOE Psychiatrist's recommendation, (2) would be willing to proceed with mental health treatment, and (3) agreed professional help could provide insight to the issues that led to his increased alcohol consumption. *Id.* at 165–66.

d. Consultant Psychologist's Report, Updated Report, and Related Testimony

In March 2025, the Individual consulted with a third-party psychologist (Consultant Psychologist) for a "psychological evaluation to assess whether he has any condition that is likely to compromise his judgment and reliability, particularly in regards [sic] to alcohol consumption." Ex. G at 70. The Consultant Psychologist, in April 2025, issued a "report [(Consultant Psychologist's Report)] based on [the Individual's] statements [during a clinical interview], history, record review, and presentation." *Id.* The Consultant Psychologist also administered a Mini-Mental Status Exam (MMSE)[12] and an Alcohol Use Disorders Identification Test (AUDIT)[13] on the Individual. *Id.* at 71. Regarding the AUDIT, the Consultant Psychologist also initially reported that the Individual "scored zero points" on the AUDIT, "indicating a lack of any harmful drinking behavior." *Id.*

Furthermore, the Consultant Psychologist concluded that the Individual "does not have any . . . AUD symptoms from the DSM[-]5" and opined the following regarding binge-drinking and the Individual:

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[12] Regarding the MMSE, the Consultant Psychologist concluded that the results "indicate[] good memory, good concentration, good long[-]term memory, good verbal skills, and good writing skills" as well as "no signs of paranoia[ ] and good reality testing (no mental problems)." Ex. G at 71. However, according to the DOE Psychiatrist, the MMSE "screen[s] for cognitive impairments" for those with possible "dementia or head injury[.]" Tr. at 144. The DOE Psychiatrist explained that the MMSE "would not be appropriate to use to make a diagnosis or to evaluate [a] person's alcohol use history in any detail." *Id.* at 145.

[13] "The AUDIT . . . is a simple and effective method of screening for unhealthy alcohol use, defined as risky or hazardous consumption or any alcohol use disorder." Ex. 11 at 1.

> Binge drinking is not listed in the DSM[-]5. It is an arbitrary measure of alcohol use. In the USA, it is defined as five drinks within a two[-]hour period . . . . The critical component of the definition, and the reason for calling several drinks of alcohol within a relative short period of time a binge, is that there is "an intention of becoming intoxicated by heavy consumption of alcohol over a short period of time."
>
> Thus, [the Individual's] previous alcohol use – a few drinks of rum (four to six), a few times a week, mostly at home, over the course of several hours, without the intention of becoming inebriated, does not meet the criteria for a binge, and was not a problem for him as far as his social or work life . . . . He drank to the point of inebriation a few times a year, but not on a regular basis . . . . He had a lapse in judgment one night, drank more than he realized, and made a poor choice – to drive his car home = [sic] resulting in a DUI.
>
> He has learned from this experience, [sic] and resolved not to drink again. He is glad that he stopped drinking, and has had no difficulty with this decision, as documented by negative alcohol screens. He was not addicted to alcohol, either psychologically or physiologically.
>
> His drinking was frequent, usually mild to moderate, but rarely qualified as a binge. . . . .
> [The Individual] is an honest, hardworking, ethical person, with friends and interests, who enjoys his work and has an excellent work record . . . .
>
> There was one lapse of judgment, related to alcohol use in the past, and being charged with a DUI, but he has stopped drinking without difficulty and does not have any emotional, mental[,] or behavioral (alcohol use) problem at this time that would impair his judgment or behavior in any way. His previous alcohol use did not affect his work, [sic] or any other important life function.

Id. at 72–73. The Consultant Psychologist made no treatment recommendations.

After reviewing Exhibit K, an updated *curriculum vitae* from the Consultant Psychologist, DOE Counsel stipulated to the Consultant Psychologist's "expertise as a general clinical psychologist with some professional experience with addiction (drug and alcohol) issues." Email from DOE Counsel to Individual's Counsel and OHA at 1 (May 12, 2025). Though the Individual provided the Consultant Psychologist's Report for the record and though the DOE stipulated to his expertise, the Individual declined to call the Consultant Psychologist as a witness to testify, and his opinion lacked the opportunity for cross examination. Furthermore, the Individual's testimony, the DOE Psychiatrist's testimony, and documentary evidence highlighted several issues with the methodology and conclusions described in the Consultant Psychologist's Report.

For example, the DOE Psychiatrist explained that "the score for the [AUDIT] test could not be a zero" given the Individual's DUI in September 2024. Tr. at 112. A copy of the AUDIT

questionnaire explains that "the AUDIT has **10** questions[,] and the possible responses to each question are scored **0, 1, 2, 3 or 4**, with the exception of questions **9** and **10** which have possible responses of **0, 2** and **4**." Ex. 11 at 1 (emphasis in original). Many of the questions ask about the test taker's alcohol consumption in the past year. *See, e.g.*, *id.* at 5 (reflecting that question 5 is "*During the past year*, how often have you failed to do what was normally expected of you because of drinking?" and that question 7 is "*During the past year*, how often have you had a feeling of guilt or remorse after drinking?") (emphasis added). At the hearing, the Individual admitted that he failed to do what was expected of him and felt guilty for the September 2024 DUI, which occurred within the past year, which suggested a "zero" answer could not have been accurate for these questions. Tr. at 111–12. The Individual submitted, from the Consultant Psychologist, an updated report (Updated Consultant Psychologist's Report) after the hearing. *See* Ex. L. In the Updated Consultant Psychologist's Report, the Consultant Psychologist revised his assessment by stating that "[o]n the AUDIT, [the Individual] scored three points." Ex. L at 9. He then immediately qualified this score by stating that "[the Individual's] actual score should be zero . . . based on his behavior over the last six months." *Id.*

The DOE Psychiatrist also disagreed that the Individual did not have *any* AUD symptoms—given the Individual's increased alcohol tolerance. Tr. at 144; *see also* Ex. 5 at 135, 39 (DOE Psychiatrist's Report finding lack of symptoms of alcohol use disorder except for "alcohol related tolerance" where the Individual self-reported needing six drinks to feel intoxicated). The DOE Psychiatrist further noted that the Consultant Psychologist contradicted himself by "indicat[ing] both that there was binge drinking and that there was not binge drinking." Tr. at 144; *compare* Ex. G at 72 ("[The Individual's] previous alcohol use . . . does not meet the criteria for a binge . . . .") *with id.* ("His drinking was frequent, usually mild to moderate, but rarely qualified as a binge."). Last, the DOE Psychiatrist noted that the Consultant Psychologist's assessment of the Individual as "open and honest and hardworking" fell outside the scope of what "an expert psychologist report" would "typically address[ ] . . ." which, to the DOE Psychiatrist, raised questions about the Consultant Psychologist's "general objectivity . . . ." Tr. at 143.

V. ANALYSIS

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; 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.

Regarding the Individual's "behavior" or "pattern of maladaptive alcohol use[,]" the Individual admitted that his alcohol consumption began to increase in 2016 due, in part, to his relationship with his ex-wife. Then, from approximately 2020 to the September 2024, he regularly drank alcohol three-to-four times per week while at home or when he ate out at a bar or restaurant alone. He also admitted to drinking to the point of intoxication every couple of months when he had six to eight drinks. At the hearing, he generally denied driving home while intoxicated prior to the September 2024 DUI. However, the Individual acknowledged that one could receive a DUI charge after any amount of alcohol impairment, even after having one beer or below a .08 BAC. He admitted to often drinking four alcoholic beverages at a restaurant or bar before driving home.

Regarding the first mitigating condition, the above pattern of alcohol use occurred recently and frequently. The Consultant Psychologist opined that the Individual's past drinking habits presented no problems for the Individual and that his eight months of abstinence sufficiently mitigated any alcohol-related concerns. However, as documented in Section IV(d), there exist several issues undermining the Consultant Psychologist's reliability, not limited to (1) the Consultant Psychologist initially reporting that the Individual scored zero points on the AUDIT, then issuing his Updated Report admitting that the Individual scored three points on the AUDIT; (2) the Consultant Psychologist's finding that the Individual lacked any symptoms of AUD in contrast to the DOE Psychologist who found that the Individual had increased alcohol tolerance, and (3) the absence of the opportunity to cross examine the Consultant Psychologist.[14] Accordingly, contrary to the Consultant Psychologist, I conclude that his eight months of abstinence, while commendable, has less comparative weight than the Individual's regular alcohol consumption over several years, eventually culminating in a DUI where he was more than twice past the legal limit. 10 C.F.R. § 710.7(c) (requiring consideration of "the nature, extent, and seriousness of the conduct" and "the frequency and recency of the conduct"). I also cannot find the behavior to have occurred under unusual circumstances given that he often drank in mundane scenarios, often while alone at home or at bar or restaurant. He also admitted to regularly consuming alcohol outside the home and subsequently driving. Mitigating condition (a) does not apply.

Regarding the second mitigating condition, the Individual must (1) "acknowledge[ ] his . . . pattern of maladaptive alcohol use"; (2) "provide[ ] evidence of actions taken to overcome this problem" and (3) "demonstrate[ ] a clear and established pattern of . . . abstinence *in accordance with treatment recommendations*[.]" Adjudicative Guidelines at ¶ 23(b) (emphasis added). I find that the Individual has acknowledged his maladaptive alcohol use; taken some steps to overcome the

[14] While many courts will not exclude or strike an expert report, "the traditional and appropriate means" of evaluating an expert opinion's reliability includes "[v]igorous cross examination, presentation of contrary evidence, and careful instruction on the burden of proof." *United States v. Harris*, 502 F. Supp. 3d 28, 33 (D.D.C. 2020) (citing *Daubert v. Merrell Dow Pharms., Inc*., 509 U.S. 579, 596 (1993)). The Individual declined to call the Consultant Psychologist as a witness, providing no such opportunity for cross examination.

issue, specifically participation in the court-ordered pretrial diversion programs and AA; and engaged in eight months of abstinence corroborated with lab testing. However, the DOE Psychiatrist recommended abstinence in conjunction with professional alcohol treatment for at least one year, and the Individual has not fulfilled this treatment recommendation. The Individual's failure to engage in professional treatment may have arisen from an honest misunderstanding of what qualified as professional treatment, but, as the DOE Psychiatrist explained, AA and pretrial programs simply do not amount to professional treatment from trained, licensed mental health professionals. As the DOE Psychiatrist further explained at the hearing after listening to the Individual's testimony, the Individual needs professional treatment to develop insight into the reasons underlying his alcohol consumption. Understanding the reason behind his maladaptive alcohol consumption in turn prevents relapse and mitigates the risk of alcohol-related issues recurring. In the absence of professional treatment and the full year of abstinence recommended by the DOE Psychiatrist, I cannot find that the Individual provided sufficient "evidence of actions taken to overcome the problem" or demonstrated abstinence "in accordance with treatment recommendations." Mitigating condition (b) does not apply.

Regarding the third and fourth mitigating conditions, the record reflects the Individual has not received professional counseling in a treatment program—instead having only attended pretrial diversion programming and AA. As explained above, the Individual has not established "abstinence in accordance with treatment recommendations" since he has not participated in professional treatment or demonstrated one year of abstinence from alcohol as recommended by the DOE Psychiatrist. Neither mitigating condition (c) nor (d) applies.

For the aforementioned reasons, I find that the Individual has not resolved the security concerns raised by the LSO under Guideline G.

VI. CONCLUSION

Above, I found that there existed sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, both 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 set forth under Guideline G. Accordingly, I find the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Andrew Dam
Administrative Judge
Office of Hearings and Appeals