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

In the Matter of: Personnel Security Hearing

Filing Date: March 12, 2025

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Case No.: PSH-25-0090

Issued: July 3, 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.”<sup>1</sup> 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 employed by a DOE contractor in a position that requires a security clearance. The DOE Local Security Office (LSO) learned that the Individual tested positive for alcohol use above his employer's policy threshold during a return-to-work Fitness for Duty (FFD) Drug and Alcohol test in March 2024. As a result, the LSO requested that the Individual be evaluated by a DOE-consultant psychologist (DOE Psychologist). Based on all of the information gathered by the LSO, including the results of the DOE Psychologist's evaluation, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his 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 and G of the Adjudicative Guidelines.

<sup>1</sup> 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.

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 one witness and testified on his own behalf. The LSO presented the testimony of the DOE Psychologist. The Individual submitted two exhibits, marked Exhibits A through B. The LSO submitted ten exhibits, marked Exhibits 1 through 10.<sup>2</sup>

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

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

Guideline E provides that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. “Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* Normally, an unfavorable determination will result from an individual’s “refusal, or failure without reasonable cause, to . . . cooperat[e] with [a] medical or psychological evaluation . . . .” *Id.* Conditions that could raise a security concern include:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine national security eligibility or trustworthiness . . . ;
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator, security official, . . . or other official government representative;
- . . . .

*Id.* at ¶ 16.

The SSC cited that the Individual told the DOE Psychologist that he would have been more careful had he known he would be subject to substance abuse screening upon return to work. Ex. 2 at 6. The SSC also cited that he did not report to complete “lab work” immediately following the psychological evaluation as instructed by the DOE Psychologist, and the Individual “seemed irritated” about needing to get it done the same day despite having ample time. *Id.* Next, the SSC cited that the Individual provided conflicting information in his security paperwork and to an investigator regarding when he started and stopped consuming alcohol the day prior to the March 2024 work incident. *Id.* Lastly, the SSC cited that the Individual provided conflicting information regarding his pattern of alcohol consumption in security paperwork, to an investigator, and during

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<sup>2</sup> This decision will cite to the corrected version of Exhibit 7, which is composed of ten pages.

the psychological evaluation. *Id.* at 7. As will be explained in further detail below in Section V, the Individual's statement regarding being more careful and his failure to undergo the test as instructed do not justify invocation of Guideline E. The remaining issues cited in the SSC justify the 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 "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, . . ." and "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder . . . ." *Id.* at ¶ 22(a) and (c). The SSC recounts that the DOE Psychologist determined that the Individual habitually or binge consumes alcohol to the point of impaired judgement and has a possible alcohol use disorder without evidence of rehabilitation or reformation. Ex. 2 at 4. The SSC also cited that the Individual underwent a test for alcohol at the time of the psychological evaluation that was positive at a level "concerningly high." *Id.* The SSC then cited the Individual's admitted history of alcohol consumption, which included drinking to intoxication up to twice a month, drinking alcohol a couple of times per week and sometimes at the rate of five or more beers, and drinking over the blood alcohol limit for driving of .08 Blood Alcohol Content (BAC) twice a week. *Id.* at 5. Lastly, the SSC cited the Individual's positive alcohol test at work. *Id.* This information justifies the invocation of Guideline G.

### III. REGULATORY STANDARDS

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

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

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

#### IV. FINDINGS OF FACT

In March 2024, the Individual returned to work after an extended leave of absence, underwent a mandatory FFD alcohol test, and tested positive at .020.<sup>3</sup> Ex. 10 at 1. A second, confirmatory test produced a result of .018. *Id.* Since the confirmatory result was below .020, it was negative for the purpose of FFD but still constituted a violation of his employer's company work rules. *Id.* As a result, his employer placed him on site access restriction (SAR) until April 2024 and required him to undergo follow-up testing for the next thirty-six months. *Id.* at 9.

On the day before the work alcohol test, the Individual consumed approximately half a bottle of vodka, the equivalent of twelve and a half ounces, mixed with orange juice. *Id.* (stating he consumed half of a 750 milliliter bottle of vodka); Ex 9 at 2. The record demonstrates that the Individual provided inconsistent information regarding the period of time over which he consumed the vodka. He submitted written responses to a Letter of Interrogatory (LOI) shortly after the incident and therein stated that he began consuming alcohol around 6:00 p.m. and ended around 10:30 pm. Ex. 9 at 2. However, in a Questionnaire for National Security Positions (QNSP) he submitted in May 2024, he instead reported that he stopped consuming alcohol at 11 p.m. Ex. 6 at 40. The Individual was subsequently interviewed by an investigator in August 2024 and reported that he stopped consuming alcohol at 6:00 p.m. the night before the incident, which contradicts the earlier information he provided in the LOI and QNSP. *Id.* at 55–56. At the hearing, the Individual explained that he provided the conflicting information because so much time had passed since the incident that he could not accurately remember when he stopped consuming alcohol. Transcript of Hearing, OHA Case No. PSH-25-0090 (Tr.) at 76.

The Individual provided the following information regarding his pattern of alcohol use. While on leave in the month leading up to the positive work test, the Individual would stay up while watching television and consume vodka and orange juice. *Id.* at 24. The Individual reported in the LOI that, prior to being on leave, he rarely consumed alcohol during the week and typically consumed it on the weekend. Ex. 9 at 2. He also said that he would drink to intoxication once or twice a month depending on the season, and he reported that it takes “around half a bottle of vodka . . . to get [him] intoxicated.” *Id.* He also reported that when he drinks with friends on the weekends, he “might get intoxicated.” *Id.* Additionally, he reported that he consumed enough alcohol to reach .08 approximately twice a week. *Id.* During his August 2024 evaluation with the DOE Psychologist, the Individual reported that he typically consumed alcohol “a couple times per week.” Ex. 7 at 1–2. He also told the DOE Psychologist that, less than once a month, he would consume five or more drinks. *Id.* However, during the interview with an investigator, which occurred later in August 2024, the Individual instead reported that he normally consumed three pre-mixed alcoholic beverages or beer twice a month at home and “one or two beers while out for dinner a few times a year as well.” Ex. 6 at 56. Thus, the Individual reported conflicting information regarding his typical pattern of alcohol consumption because he reported drinking to .08 twice a week and to intoxication twice a month in the LOI but told the investigator that he only consumed alcohol twice a month while at home. At the hearing, the Individual testified that his typical pattern of consumption in the five preceding years was to consume approximately two or three of the pre-mixed, high alcohol content beverages twice a week. Tr. at 67–69 (testifying that

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<sup>3</sup> All future references to BAC after the percentage will be omitted.

he believed that he would reach .08 after consuming two or three of the pre-mixed drinks). He also testified that his decision to consume approximately half of the bottle of vodka (over three self-made drinks) on the night before the test was atypical. *Id.* at 68.

The Individual's employer placed the Individual on SAR immediately after testing positive. Tr. at 30–31, 33. The Individual's employer also required him to speak with a substance abuse counselor, which he did in April 2024. *Id.* at 54. After evaluating the Individual, that counselor asked the Individual whether he would be willing to engage in counseling for alcohol use, which he said he would. *Id.* at 56–57. At the time, the Individual thought that he would be required to go to counseling before returning to work. *Id.* However, the counselor concluded that the Individual “showed no evidence of clinical substance abuse disorder” and that the Individual was “not recommended to complete any substance abuse treatment or education.” Ex. 10 at 10. The employer removed the Individual's SAR a few weeks after he met with the counselor. Tr. at 57. The Individual began consuming alcohol again thereafter. *Id.* at 31.

The DOE Psychologist reached a different conclusion in his report (Report) after evaluating the Individual. Ex. 7. As part of the evaluation, the DOE Psychologist administered an Alcohol Use Disorders Identification Test (Audit) to screen the Individual's alcohol use and recorded a score of five, which he determined indicated risky, harmful, or hazardous alcohol use within the past year. *Id.* at 2 (also explaining that a score of fifteen or more for men “is likely to indicate alcohol dependence”). However, the record does not include the Audit paperwork or scoring rubric to explain why a score of five is associated with harmful or hazardous drinking. And during the hearing, the DOE Psychologist only testified that the Audit score indicated risky consumption. Tr. at 101. The DOE Psychologist also noted that the Individual indicated that he would have been careful not to use alcohol in close proximity to his return to work if he had known that he would be required to undergo “substance use screening.” Ex. 7 at 3. The DOE Psychologist administered a Personality Assessment Inventory and reported that the results of the test indicated that the Individual “seems to be reluctant to admit to dysfunction or problems across many areas.” *Id.* at 4.

During the evaluation, the DOE Psychologist informed the Individual that he would be required to travel to a different location to undergo a Phosphatidylethanol (PEth) test, which can detect recent alcohol consumption. *Id.* at 5. The DOE Psychologist noted that the Individual “seemed a little irritated about needing to get his labs taken the same day” since it required him to travel to a site about an hour away from the evaluation location. *Id.* The Individual failed to arrive in time to take the test as instructed, which was Friday, despite having, according to the DOE Psychologist, “ample time to get there.” *Id.* Instead, the Individual phoned the DOE Psychologist at approximately 4:30 p.m. and stated he would have to complete the lab tests on the following Monday, which he did. *Id.* The PEth test result was positive at 1,027 ng/mL, which was significantly over the 20 ng/mL detection threshold. *Id.* According to the interpretive guidance provided by the laboratory on the test result, “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption.” *Id.* at 10. The DOE Psychologist opined that the test result was “concerningly high[.]” *Id.* at 6. The DOE Psychologist also noted that the Individual's responses during the evaluation “suggest that he is satisfied with himself . . . and sees little need for changes in behavior.” *Id.* at 5. As a result of the Individual's reported alcohol use, including the “risky” result on the Audit, his failure to acknowledge that alcohol is negatively

impacting his life, and his concerning high PEth results, the DOE Psychologist concluded that the Individual habitually or binge consumes alcohol to the point of impaired judgment.<sup>4</sup> *Id.* at 6; *see also* Tr. at 107 (the DOE Psychologist opining that the Individual’s self-reported level of alcohol consumption and PEth test results demonstrate that he engages in habitual or binge consumption of alcohol). The DOE Psychologist also opined that the Individual “possibly” had an alcohol use disorder based on his high PEth level and needed “substance abuse counseling to better determine if he is [in] denial about his quantity of consumption.” *Id.* at 6. The DOE Psychologist recommended that the Individual could demonstrate rehabilitation or reformation from his problematic alcohol use by undergoing twelve weeks of outpatient substance use counseling, weekly Alcoholics Anonymous (AA) meetings over the same period, and following any additional recommendations made by counselors. *Id.*

At the hearing, the Individual established a reasonable explanation for his failure to timely appear at the testing facility. At the time of the evaluation, the DOE Psychologist informed the Individual that the testing facility closed at 5:00 p.m. and instructed him to complete the test by the end of the day.<sup>5</sup> Tr. at 80, 103. After the evaluation, which ended around 1:00 p.m., the Individual went home to sleep for “a couple of hours” before travelling to the test location because he had worked the evening before and the evaluation took place during his normal sleep period. *Id.* at 79–80, 128. But, when he arrived for testing at 4:30 p.m., the facility informed him that they had stopped drawing blood for the day at 4:00 p.m. and he would therefore have to return the following Monday. *Id.* at 80–81; Ex. 1 at 2. From these circumstances, it is likely that the Individual would have appeared in time to take the PEth test had he known the correct time that they stopped taking blood samples. I also find that he reasonably relied upon the information provided by the DOE Psychologist and took reasonable action upon learning of the issue by contacting the DOE Psychologist for further instruction. The fact that the Individual displayed irritation does not detract from my conclusion. The Individual confirmed that he was irritated at the time he was told he would have to take the test because he was required to report to a testing location that took approximately an hour and a half to reach. Tr. at 104, 128; *see also id.* at 103–04 (the DOE Psychologist testifying that having to send people to the testing location, based on the distance from the evaluation site, “is a little bit of a pain,” and that he had previously attempted to get approval to send people to a closer location as a result). The Individual also testified that he was upset that he had missed the test because it looked like he was “dodging” it and because his employer was not going to reimburse him for the time he spent attempting to complete the testing. *Id.* at 81. This would certainly account for why he came across as irritated when he called the DOE Psychologist to report the issue, which is a reasonable response, and it does not, based on the circumstances, establish that he was attempting to avoid complying with the instructions of the DOE Psychologist.

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<sup>4</sup> According to the Report, the DOE Psychologist’s definition of binge consumption is “five or more standard drinks per occasion or more than two standard drinks per day averaged over a 30-day period.” Ex. 7 at 8. Habitual consumption is defined as “[b]ecoming intoxicated twice a month . . .” *Id.* at 9. OHA has routinely defined habitual consumption of alcohol to the point of impaired judgment as intoxication at least once monthly. *See, e.g.,* Personnel Security Hearing, OHA Case No. PSH-24-0004 at 4, note 4 (2024) (accepting approximately monthly intoxication as habitual consumption of alcohol to the point of impaired judgment).

<sup>5</sup> The Individual also checked the facility’s website the same day as the evaluation and confirmed that it closed at 5:00 p.m. Tr. at 80.

As for the inconsistencies in reporting his alcohol use, the Individual asserted that he accepted responsibility for the inconsistencies and blamed his poor memory and the fact that he rushed to complete the LOI because he thought the issue had been resolved. Ex. 1 at 3 (explaining that his employer had already administratively punished him and that he thought the LOI was a “formality”). He explained that he provided the information “months apart” without the ability to reference any documentation given his inability to access electronics at work. *Id.*

The record demonstrates that after the psychological evaluation, the Individual told his wife that he would be willing to do what is required to keep his job. Tr. at 32. However, the Individual did not attend any treatment or AA although he understood that the DOE Psychologist recommended that he attend both.<sup>6</sup> *Id.* at 53, 61. The Individual testified that he did not think he had an alcohol problem, he had been waiting for his employer to instruct him to complete treatment, and he would only do it if required by his employer. *Id.* at 61–62. However, after he received the SSC, he began abstaining from alcohol use in late February 2025 in order to demonstrate that he did not have a problem with alcohol. *Id.* at 24, 39 (wife testifying that he had been abstinent since February 2025), 64–66 (Individual testifying that he began abstaining after receiving the SSC); Ex. 2 (Notification Letter dated February 26, 2025). He continued to abstain up to the hearing date. Tr. at 39, 66; Ex. A (negative PEth test result dated April 9, 2025); Ex. B (negative PEth test result dated April 25, 2025).

In reference to the Individual’s statement that he would have been more careful had he known he would be tested at work, the Individual testified that, in retrospect, it would be “common sense” to avoid consuming alcohol prior to coming to work on the day of the test—no different than studying the night before a known exam. Tr. at 88.

On the hearing date the DOE Psychologist opined that the Individual “still needed “some education about what is excessive” alcohol use given the Individual’s history of excessive alcohol use, the Individual’s failure to accept that his level of consumption presented a problem, and the evidence that the Individual had only been abstaining from alcohol for the last two months because he was motivated to preserve his clearance. *Id.* at 117. The DOE Psychologist also opined that the Individual’s lack of willingness to follow the treatment recommendations is a risk factor for returning to problematic alcohol consumption. *Id.* at 122. The DOE Psychologist further opined that the Individual’s testimony demonstrated a lack of understanding or insight into why he consumed significant amounts of alcohol, including the evening before the work incident. *Id.* at 122; *see id.* at 70 (the Individual testifying “I don’t know” and “I don’t have any reason” for why he would consume alcohol to the point of intoxication approximately twice a month). Consequently, the DOE Psychologist continued to recommend that the Individual complete outpatient substance use counseling. *Id.* at 123. The DOE Psychologist concluded that, if the Individual were to complete outpatient treatment and continue abstinence with random testing for accountability, his prognosis would be “decent.” *Id.* at 142–44, 147 (also using the term “favorable” instead of decent).

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<sup>6</sup> The Individual explained that he did not attend AA because he thought the issues related to his work incident were resolved when he was removed from SAR. Tr. at 61. However, he certainly knew that the issues were not resolved when he was informed that his clearance had been suspended when he received the Notification Letter and SSC dated February 5, 2025. Ex. 4 at 1.

## **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.

As an initial matter, I will address the items cited in the SSC that, as indicated above in Section III, do not establish a security concern. I conclude that the Individual's statement to the DOE Psychologist that he would have been more careful had he known he would be tested for alcohol use does not constitute concerning behavior. Rather it is a prudent statement of regret that he



engaged in behavior that precipitated the present case. The evidence in the record indicates that his employer had a prohibition on testing positive for alcohol at work—not from consuming alcohol outside of work—thus, the fact that the Individual would have taken more care to appear at work without alcohol in his system indicates a step that any reasonable employee would undergo to ensure compliance with an employer’s rules. It does not indicate an attempt to conceal relevant facts or any other concerning behavior under Guideline E.

Additionally, the reasonable explanation provided by the Individual for his late arrival at the clinical testing site establishes reasonable cause for his failure to comply with the instructions of the DOE Psychologist. There is no evidence that the Individual was instructed to arrive at any particular time to complete the testing, the Individual reasonably relied upon the instruction of the DOE Psychologist that he had until close to complete the testing, and appearing half an hour before close was reasonable given the circumstances. Thus, I conclude that the Individual’s failure to timely appear does not demonstrate a refusal or failure to comply with the psychological evaluation.

The remaining derogatory information regarding the Individual’s inconsistent statements, however, remains unresolved for the following reasons.

Paragraph 17(a) does not apply to resolve the concerns because the Individual did not attempt to correct the contradictory information before being confronted with the fact that the various answers he provided were inconsistent and indicated that he provided false information.

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

As for ¶ 17(c), I conclude that the severity of the Individual’s behavior, the passage of time since it occurred, the frequency of the behavior, and the circumstances surrounding it do not demonstrate that his behavior is unlikely to recur. First, the offenses are not minor. There is substantial evidence to establish that the Individual intentionally provided false information in either the QNSP, during his interview, or during the psychological evaluation. For example, the Individual reported in the LOI that he drinks to intoxication twice a week but told the investigator that he drinks alcohol only twice a month. Those are very different accounts and cannot be explained as readily as the conflicting information he provided regarding when he stopped consuming alcohol on the night before he tested positive at work. The latter, standing alone, may well have been resolved by his explanation that he has a poor memory since it only dealt with a matter of timing that differed by a mere thirty minutes in some accounts. However, it is abundantly clear from the record that the Individual’s pattern of alcohol consumption was consistent for several years preceding the work incident, and I therefore find it likely that he underreported his typical pattern of consumption when speaking with the investigator. Accordingly, I am therefore skeptical that the Individual mistakenly misreported his consumption on the night before the incident, as he may have been, for example, attempting to paint a more favorable picture of the events that precipitated his positive alcohol test by reporting that he stopped consuming alcohol hours before he actually stopped since it is against his employer’s rules to have alcohol in his system at work. Given that I remain concerned regarding his credibility, I conclude that the passage of time and the frequency of his

conduct do not apply to resolve the concerns. Lastly, there is no evidence in the record to establish that the circumstances surrounding his behavior were unique.

I also conclude that ¶ 17(d) does not apply to resolve the concerns. Because I find that the Individual's explanations for his concerning conduct are not credible, I conclude that the Individual has not acknowledged his behavior despite his assertion that he has taken responsibility for it. I also do not conclude that he has taken positive steps to alleviate the stressors, circumstances, or factors that contributed to his conduct because the Individual has not provided evidence of any such action. The mere fact that he has recently begun abstaining from alcohol does not establish that he has taken positive steps to alleviate the stressors, circumstances, or factors that contributed to him providing inaccurate information regarding his alcohol use.

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 his particular vulnerability to exploitation, manipulation, or duress. Paragraph 17(f) is inapplicable because there is no evidence in the record to indicate that the information cited in the SSC under Guideline E is unreliable. And ¶ 17(g) is inapplicable because there is no allegation that the Individual's conduct involved association with persons involved in criminal activities.

Accordingly, I find that the Individual has not resolved the Guideline E concerns.

## **B. Guideline G Considerations**

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

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

Adjudicative Guidelines at ¶ 23.

I conclude that none of the above mitigating conditions apply to resolve the Guideline G security concerns. I find that ¶ 23(a) does not apply because that mitigating condition is based on the passage of time, infrequency of the conduct, or unusual circumstances under which the conduct occurred such that the concerning conduct is unlikely to recur. Here, the Individual had a history of alcohol consumption over the preceding five years, including admitted intoxication multiple times monthly, that he only changed approximately two months before the hearing date. Accordingly, I conclude that the concerns are not mitigated by the passage of time or infrequency of the behavior. Furthermore, there is no evidence from which to conclude that the Individual consumed alcohol under unusual circumstances other than his assertion that it was out of his norm to consume a half bottle of vodka on the evening before the employer administered alcohol test. However, he also reported that it would take half a bottle of vodka for him to reach intoxication, and he admitted that he would reach intoxication when consuming alcohol with friends. Thus, the circumstances of his problematic alcohol use were not unusual.

Second, I find that ¶ 23(b) does not apply to resolve the security concerns. The Individual denied that his alcohol use had been maladaptive. Furthermore, he has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations because he has only been abstinent for approximately two months and he did not follow the treatment recommendations of the DOE Psychologist to attend outpatient counseling and AA.

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

## **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 and Guideline G 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 and G 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