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

In the Matter of: Personnel Security Hearing )  
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Filing Date: April 13, 2018 ) Case No.: PSH-18-0036  
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Issued: July 10, 2018

**Administrative Judge Decision**

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” 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 him to hold a security clearance. In June 2017, the individual self-reported that he was arrested for driving under the influence of intoxicating liquor or drugs. Ex. 9. Subsequently, the local security office (LSO) held a Personnel Security Interview (PSI) with the individual in August 2017. Ex. 12. In response to information gathered at the PSI, a DOE consulting psychologist (the psychologist or DOE psychologist) evaluated the individual. Ex. 7.

Because the psychologist’s evaluation raised unresolved security concerns, the LSO informed the individual, in a Notification Letter dated February 21, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) and Guideline I (psychological conditions) of the Adjudicative Guidelines. Ex. 1.

<sup>1</sup> Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted 13 numbered exhibits (Exhibits 1-13) into the record and presented the testimony of the DOE psychologist. The individual tendered 9 exhibits (Exhibits A-I) and presented the testimony of six witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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), cert. denied, 499 U.S. 905 (1991) (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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines G and I of the Adjudicative Guidelines. Guideline G relates to security risks arising from 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. Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon the DOE psychologist’s November 2017 conclusion that the individual “is frequently (habitually) drinking to excess without adequate evidence of rehabilitation or reformation.” Ex. 1. Additionally, the LSO cited a June 2017 incident in which the individual was arrested and charged with Driving While Intoxicated, First Offense, and Eluding a Police Officer. *Id.* The LSO noted that the individual admitted, during an August 2017 PSI, that “prior to

his arrest, he consumed 2, 16-ounce beers and 2-ounces of homemade brandy and was intoxicated.” *Id.* Further, the LSO cited that the individual’s breath alcohol content registered “.08 or above the legal limit.” *Id.*

Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b). With respect to Guideline I, the LSO relied upon the DOE psychologist’s conclusion that the individual “has an emotional, mental, or personality condition that can continue to impair his judgment, reliability, or trustworthiness.” Ex. 1. The LSO additionally cited the psychologist’s opinion that the individual’s “difficulty being candid about his use of alcohol and probable disregard for court restrictions are antisocial tendencies and as such constitute mental conditions that can impair his judgment, reliability, or trustworthiness.” *Id.*

#### **IV. Findings of Fact**

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

During an August 2017 PSI, the individual acknowledged that in early June 2017, he was “pulled over for [driving while intoxicated] DWI.” Ex. 12 at 9. He explained that earlier in the day, he was performing work on his air conditioner for “quite a bit of the day” in high temperatures. *Id.* at 9-10. He stated he did not consume any beer, but drank water to stay hydrated. *Id.* at 20-21. The individual reported that, at some time between 5:00 and 6:00 p.m., he came down from the roof and began to prepare a meal. *Id.* at 10. He ate the meal, left his home, and drove to a brewery, where he consumed two 16 ounce beers, starting at 6:00 p.m. *Id.* at 12-14. Around 9:00 p.m., he sampled “a little bit” of brandy provided by a customer of the brewery. *Id.* 13, 16. Around 10:00 p.m., the individual left the brewery for his home, which was approximately a mile away. *Id.* at 19.

On his way home, the individual explained that he “fell asleep, and [he] pulled over, and...fell asleep.” *Id.* at 20. He stated that he was “a couple thousand feet” from his home, but he “must have been really tired,” so he “pulled off the side” of the road. *Id.* 21-22. The individual later clarified that he was uncertain if his car was stopped on the side of the road or in a turning lane. *Id.* at 32. While the individual’s account is not entirely clear, he appears to indicate that he woke up when a police officer “prompted [him] at the window.” *Id.* at 20. He stated that he then drove home and entered his driveway, at which time, a police officer approached, requested that he come to the curb, and began to inquire about his alcohol consumption. *Id.* at 20, 24. The individual explained that he refused to submit to either a Breathalyzer or a field sobriety test. *Id.* at 26-27. He reported that he was subsequently arrested and underwent a Breathalyzer. *Id.* at 28. Ultimately, the individual stated that he should not have been driving that night. *Id.* at 38.

Following the PSI, the individual was evaluated by a DOE consultant-psychologist in November 2017. Ex. 7. During the psychologist’s clinical interview, the individual reported that he had not consumed alcohol since the DWI, and that he intends to abstain “for a while.”<sup>2</sup> *Id.* at 6. The

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<sup>2</sup> As part of the psychological evaluation, the psychologist administered two laboratory tests: Phosphatideylethanol (PEth) and Ethyl Glucuronide (EtG). Ex. 7 at 6. Both of the tests reported negative results, which the psychologist noted supported the individual’s claims that he had not recently been consuming alcohol. *Id.*

psychologist reported that the individual clarified that his future intentions are to “not drink to excess...and limit himself to two beers unless it is a several hour celebration.” *Id.* In describing his alcohol consumption prior to the DWI, the individual explained that he might become intoxicated once or twice per year on special occasions. *Id.* at 6. On weeknights, he would typically consume one beer with dinner and another sometime later in the evening; on weekends, he might consume up to three beers each day, usually with his friends. *Id.* at 7. The individual reported that he still meets up with his friends at drinking establishments, but he only drinks sodas.<sup>33</sup> *Id.* He clarified that, with the exception of his June 2017 DWI, he had not driven while intoxicated since 2005. *Id.* at 6.

In turning to the night of the DWI, the individual reported to the psychologist that, prior to going to the brewery, he consumed a glass of wine while he cooked dinner. *Id.* at 3. He additionally reported that he “could have” consumed more alcohol at the brewery than he reported in the PSI, and that when he left the brewery, he was “intoxicated but not so intoxicated that [he] shouldn’t drive.” *Id.* at 3. The psychologist noted that, although the individual claimed he fell asleep on the night of his DWI, it was the judgment of the police officer that the individual had passed out. *Id.* at 4. Furthermore, the individual was not able to recall where his car was located when he reportedly fell asleep, whether it was in traffic or on the side of the road. *Id.* The psychologist opined that it was “very likely that [the individual] had consumed much more alcohol” than he reported as it is “highly improbable” that the individual passed out after consuming only two 16 ounce beers and a small amount of brandy. *Id.*

With regard to the individual’s alcohol consumption, the psychologist concluded that there were “several indications that [the individual] is frequently (‘habitually’) drinking to excess.” *Id.* at 9. He opined that, at the time of the evaluation, an insufficient amount of time had passed to conclude that the individual had “control over his drinking” as he had been “alcohol abstinent for only five months.” *Id.* In order to demonstrate adequate evidence of reformation or rehabilitation, the psychologist recommended that the individual permanently abstain from consuming alcohol and provide evidence of alcohol abstinence, such as PEth tests every ten to twelve weeks, for a period of 12 months. *Id.* He also suggested that the individual enroll in an intensive outpatient program (IOP), with individual and group components, which met two hours a day for four days per week, over the course of at least four weeks. *Id.*

Additionally, as part of the evaluation, the psychologist administered the Minnesota Multiphasic Personality Inventory-2 Restructured Form (MMPI). *Id.* at 7. In examining the Antisocial scale of this test, the psychologist noted that the individual denied problems that he had previously discussed in the clinical interview. *Id.* The psychologist reported that, if the individual “had admitted to those items, then his Antisocial scale would have reached clinical significance.” *Id.* He explained that the test suggested that when the individual “has a problem he likely attempts to blame others for part or all of it.” *Id.* The psychologist opined that the individual’s “apparent difficulty in being candid about the degree of alcohol consumption and his likely violating restrictions against entering bars (prior [to the dismissal]), however, suggests that being untruthful

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<sup>33</sup> The psychologist noted that, although the individual’s DWI was dismissed in September of 2017, the individual may have violated a condition of release prior to that date by entering establishments that primarily serve alcohol. Ex. 7 at 4, 7.

and disregarding rule/authority, both facets of antisocial behavior, remain active.” *Id.* at 8. The psychologist concluded that these tendencies “are mental conditions that can impair [the individual’s] judgment, reliability, and trustworthiness,” and are independent of the individual’s alcohol consumption. *Id.* The psychologist opined that the prognosis for these tendencies not to be active in the future was poor. *Id.*

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual has not sufficiently mitigated the security concerns noted by the LSO with regard to Guideline I. I cannot find that restoring the individual’s DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the individual’s security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns, under Guidelines G and I, exist as a result of the individual’s DWI, PSI, and psychological evaluation.

At the hearing, the individual presented the testimony of six witnesses, including himself. Three of his witnesses were coworkers, one was a neighbor and good friend, and the last was his landlord. Tr. at 11, 23, 31, 41, 53, 67. Each of the individual’s coworkers testified that they had never seen or suspected that the individual was intoxicated or under the influence of alcohol at work, and all stated that he is trustworthy. *Id.* at 14-15, 18, 23-24, 28, 34-35, 39.

The individual’s neighbor testified that he frequently socializes with the individual, performing various projects on their properties. *Id.* at 42. The neighbor stated that he trusts the individual, and explained that the individual is involved in the neighborhood and provides help to his neighbors when they need it. *See id.* at 42-44. With regard to the individual’s alcohol consumption, the neighbor stated that after performing their chores or while socializing at dinner, he and the individual might consume one to two beers; however, he testified that he has never seen the individual consume more than two beers, nor has he seen the individual drink to excess. *Id.* at 44-45, 49. Additionally, he stated that he has not witnessed the individual consume alcohol since the individual was arrested for the DWI. *Id.* at 46-47.

The individual’s landlord testified that the individual has been renting a home from her for approximately ten years, and in that time, she has never had any problems with the individual, and the individual has always been honest and forthcoming with her. *Id.* at 53, 55. Further, she testified that she “trust[s the individual] with [her] life.” *Id.* at 55. Turning to his alcohol consumption, the landlord stated that she and the individual have “shared a beer occasionally,” but she has never seen him drunk or intoxicated. *Id.* at 57. She also testified that she and the individual have learned to brew “hard cider,” and although he continues to help her brew the cider, he no longer samples the cider and he has not consumed alcohol since being arrested for the DWI. *Id.* at 57, 59-60.

The individual then testified on his own behalf. *Id.* at 67. He testified that on the day of the DWI, in June 2017, he had been working on his roof for most of the day. *Id.* at 68. He then came down from the roof and began to prepare dinner. In his testimony, he admitted for the first time that he may have consumed a beer with dinner.<sup>4</sup> *Id.* at 69, 147. He then left his home for a “brewery around the corner” and consumed “a couple beers,” which he later clarified to be two beers, and approximately one to two ounces of brandy from a stranger at the brewery.<sup>5</sup> *Id.* at 69, 72-73; 95, 147.

The individual testified that he then left the brewery for his home, which was three miles and approximately five minutes away, around 10:00 p.m. *Id.* at 73; 103. He stated that when he left the brewery he felt “fine” and “didn’t feel like [he] should refrain from going anywhere.” *Id.* at 73; 97. However, after a few minutes of driving, he became “real sleepy” and “pulled over to the side of the road, and the car was in park, and [he] stopped the car.” *Id.* at 74; 98. When asked to explain why he was not able to make the short drive to his home, the only explanation the individual could provide was that he was hot, tired, and thirsty. *Id.* at 148. The individual explained that, at some point, he awoke as he felt a police officer was prompting him to leave, so he went “right around the corner” to his house. *Id.* at 74. The police officer followed the individual to his home, and performed a field sobriety test, but the individual declined to take a Breathalyzer test. *Id.* At 74-75. He was transported to a holding facility where he agree to undergo a Breathalyzer test, and he was arrested. *Id.* at 75.

The individual testified that, immediately following the arrest, he visited the Employee Assistance Program (EAP) at his worksite and began engaging in counseling through that program within a week. *Id.* at 107. He also began attending weekly Alcoholics Anonymous (AA) meetings in July or September of 2017. *Id.* at 114. In November, he contacted a counseling program on the recommendation of his EAP counselor and began a “Recovery/Relapse Prevention Program” in April of 2018. *Id.* at 109; Ex. A. The individual stated that this program consists of group sessions of two-and-a-half hours one day per week and one individual session once per month. Tr. at 79. He indicated that the program is 20 weeks in length, and at the time of the hearing, he was halfway through completion. *Id.* Additionally, in April 2018, he enrolled in an Intensive Outpatient Treatment (IOT) Program, which consists of 12 weeks of two-and-a-half hour group sessions, a one hour individual session, and a one hour Alcoholics Anonymous (AA) meeting. *Id.* at 80. The individual stated that he is consistent with his attendance and has been making positive progress, which is supported by submissions from both of his programs. *Id.* at 82; Ex. A-B. However, when asked, the individual was unable to describe which of the Twelve Steps he was currently working on, and further, he seemed unable to specifically describe any of the steps. *See id.* at 115-116.

The individual testified that he has not consumed alcohol for over 12 months, and stated that this is supported by a positive PEth test and positive pre-screening tests for his treatment programs. *Id.* at 72; 83, 150. He also clarified that, while his conditions of release were in effect, prohibiting him from entering any liquor establishment, he abided by those conditions. *Id.* at 71-72. However, once

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<sup>4</sup> It is unclear as to whether the admission that the individual may have consumed a beer with dinner is in addition to the wine he told the psychologist he consumed while preparing dinner or whether the admission is an inconsistency in the individual’s story.

<sup>5</sup> Although the exact amount of brandy that the individual consumed is unknown, it appears that it was approximately one to two ounces. *See* Tr. at 96; 162. The individual described it as “a little bit in the bottom of a...cup.” *Id.* at 73.

his DWI was dismissed, he began visiting breweries and restaurants that serve alcohol on occasion, but he does not consume any alcohol. *Id.* at 71; 105. He testified that he does not intend to consume alcohol in the near or long-term future. *Id.* at 89. He also stated that, aside from the June 2017 incident, he has never driven while intoxicated. *Id.* at 130.

Turning to his psychological evaluation, when asked if there were any inaccuracies in the psychologist's evaluation, the individual stated that he could not recall if the psychological report was accurate. *Id.* at 123. Accordingly, I provided the individual approximately 45 minutes to review the report. *Id.* at 123. Notably, the individual did not object to the statement in the psychological report that indicated that the individual had stated that, aside from the June 2017 DWI, "he ha[d] not driven while intoxicated since 2005." In fact, when asked whether this statement was accurate, he stated that it was; however, when asked to explain why he testified that he had never driven while intoxicated prior to the June 2017 incident, the individual stated that he was "confused" and stated that he did not know what the statement in the psychological report meant. *Id.* at 151-152.

Lastly, after hearing all of the previous testimony, the psychologist testified. *Id.* at 158, 161. The psychologist acknowledged that there may have been a miscommunication during the clinical interview with regard to the individual's explanation of his social activities at breweries while under the conditions of release. *See id.* at 170. The psychologist noted that he should have clarified the timeline with the individual, but the psychologist acknowledged that the individual "may be telling the truth" that he did not visit breweries while under his conditions of release. *Id.*

With regard to the individual's alcohol consumption, the psychologist explained that he concluded that the individual "is frequently habitually drinking to excess" based upon the individual's report that he did not feel intoxicated when he stopped drinking on the night of the DWI. *Id.* at 168-169. The psychologist explained that the individual "should have felt really quite intoxicated given that...several hours later, he registered above...08." *Id.* at 169. The psychologist stated that this scenario lead him to believe that the individual had developed a tolerance for alcohol through heavy drinking. *Id.*

Ultimately, however, the psychologist opined that the individual had shown adequate evidence of rehabilitation or reformation with regard to his frequent habitual drinking to excess, as the individual "did meet some of the things [the psychologist] asked him to do." *Id.* at 172. Although the psychologist noted that the individual did not meet the recommendations as much as he would have liked, he stated that the individual "reasonably" did what he could to meet the recommendations. *Id.*

The psychologist noted that he did not "believe at this point that alcohol is the main problem," and he stated that he was more concerned with the individual's antisocial behavior, namely his lying or lack of candor. *Id.* at 174; *see id.* at 179, 199. The psychologist explained that he administered the MMPI to the individual, and the individual's score on the antisocial scale "almost [reached] into statistical clinical significance." *Id.* at 175. The psychologist noted that, once he examined the individual's actual answers to the test questions, he realized that the individual answered two of the questions in opposition to information that was revealed during the clinical interview. *See id.* at 175-176. The psychologist testified that, had the individual "endorsed those two [areas], he would have been over the top in antisocial." *Id.* at 176. The psychologist clarified that, in spite of

the individual's MMPI score, he does not have an antisocial personality disorder; however, he does show a facet of the diagnosis, specifically lying. *Id.* at 176, 178-180.

The psychologist further stated that the individual's testimony at the hearing demonstrated that the individual's antisocial facet of lying is worse than he (the psychologist) originally thought when he interviewed the individual in November of 2017. *Id.* at 203. He testified that the individual "is a man who is not going to tell the truth...when his back is against the wall. He's going to blame it on other people. He's going to make up facts." *Id.* at 179. The psychologist noted several instances during the hearing in which the individual's testimony was not accurate or was inconsistent. For instance, the psychologist noted that, during his PSI and the clinical interview, the individual stated that he did not remember where he stopped his car on the night of the DWI, yet in the hearing, he stated that he pulled over to the side of the road. *Id.* at 162; Ex. 7 at 4; Ex. 12 at 32. Additionally, during the hearing, the individual stated that he parked his car, but the police report stated that the car began rolling when the police officer's tapped on the window, indicating that the car was not in park. Tr. at 165; *see* Ex. 9.

#### **A. Guideline G**

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, can disqualify an individual from holding a security clearance. Guideline G at ¶ 22(a). Additionally, diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder can raise security concerns and serve as a disqualifier to a security clearance. *Id.* at ¶ 22(c). An individual may be able to mitigate security concerns arising under Guideline G if the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program. *Id.* at ¶ 23(d).

Here, not only was the individual arrested and charged with a DWI, but the DOE psychologist determined that the individual "frequently ('habitually')" consumed alcohol to excess. Ex. 7 at 9; Ex. 11. The psychologist stated that, in order to show adequate evidence of rehabilitation, the individual needed to abstain from alcohol for a period of at least twelve months, document the reported abstinence with PEth tests, and enroll in an IOP with individual and group components. Ex. 7 at 9. The individual has abstained from alcohol for over 12 months, has been consistently participating in an IOT and Recovery/Relapse Prevention Program, and has demonstrated a negative PEth test. Ex. A, B, E. As such, the psychologist determined that the individual demonstrated adequate evidence of reformation or rehabilitation. In light of the individual's efforts to address the alcohol-related security concerns, the length his abstinence thus far, and the DOE psychologist's determination that the individual has demonstrated adequate evidence of reformation or rehabilitation, I conclude that the security concerns under Guideline G have been sufficiently mitigated. *See* Guideline G at ¶ 23(d).

#### **B. Guideline I**

Certain personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, or trustworthiness can serve as a disqualifying condition for a security clearance. *Id.* at ¶ 28(b). The individual may be able to mitigate security concerns under

Guideline I if, in relevant part, the individual obtains a recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation. *Id.* at ¶ 29 (c).

Here, the psychologist found that the individual's difficulty being candid about his alcohol use is an antisocial tendency, and as such, it constitutes a mental condition that could affect his judgment, reliability, and trustworthiness. Ex. 7 at 9. Furthermore, after observing the individual's testimony at the hearing, the psychologist opined that the individual's antisocial tendency, the lack of candor, is worse than he originally concluded, and he provided a number of examples of the individual's inconsistent or inaccurate testimony during the hearing, indicating that the individual's condition persists. *Contra* Guideline I at ¶ 29 (c)(e).

Furthermore, based upon my own observations of the individual at the hearing, I do not find his testimony to be credible. Not only did the individual's story vary as to whether he pulled over to the side of the road, but he was unable to provide a clear and logical explanation as to why he was unable to make the short drive to his home. Additionally, when asked to reconcile the testimony that he had never driven while intoxicated prior to the June 2017 incident and his seemingly conflicting admission of the accuracy of statement regarding his not driving while intoxicated since 2005, the individual appeared to become nervous and evasive of the question. He stated he was "confused" and did not know what the statement in the psychological report meant. Tr. at 151-152. Likewise, I found the individual's response to the question regarding his participation in the AA steps to be evasive. The individual claimed that he had been participating in AA since July or September of 2017; however, he was unable to clearly articulate any of the Twelve Steps, nor was he able to explain the step on which he was currently working. *See id.* at 114-116.

Further, there were several distinct examples of testimony that was discrepant from the individual's previous accounts of his story. For instance, during the PSI, individual stated that on the night of the DWI, he refused to submit to a field sobriety test; however, during the hearing, he stated that he did perform a field sobriety test. According to the police reports of the incident, he refused to perform the field sobriety test. Ex. 9. Also, during the PSI, the individual stated that he "made a bad decision" and should not have been driving on the night of the DWI, and at the psychological evaluation, he stated that when he left the brewery he was "intoxicated, but not so intoxicated that [he] shouldn't drive."<sup>6</sup> Ex 7 at 3; Ex. 12 at 38. During the hearing, the individual testified that, when he left the brewery, he felt "fine" and "didn't feel like [he] should refrain from going anywhere." Tr. at 73; 97

Ultimately, the psychologist's conclusion is congruous with my observations of the individual's evasive and inconsistent testimony at the hearing. As such, I find that the individual has failed to mitigate the security concerns under Guideline I.

## **VI. Conclusion**

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<sup>6</sup> Aside from the discrepancy presented by this statement, I note that the statement itself evidences a clear lack of judgment, in that the individual acknowledges being intoxicated, but believes it acceptable to drive in that condition.

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 have found that the individual has brought forth sufficient evidence to resolve the security concern associated with Guidelines G; however, the individual has not brought forth sufficient evidence to resolve the security concern associated with Guideline I. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals