

\*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: November 6, 2019	)	Case No.: PSH-20-0008
	)	
_____	)	

Issued: January 16, 2020

---

**Administrative Judge Decision**

---

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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."<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**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual completed a Questionnaire for National Security Positions (QNSP) on February 23, 2017, in connection with seeking access authorization. Exhibit (Ex.) 4 at 34. The Individual disclosed on the QNSP that he had been arrested and charged with Driving Under the Influence (DUI) and reckless driving in 2013, but that he had not been charged with any other alcohol-related offenses. *Id.* at 34–36. However, the local security office (LSO) subsequently determined that the Individual had failed to disclose four other alcohol-related offenses on the QNSP. *See* Ex. 26 at 1.

Upon discovery of the Individual's alcohol-related offenses, the LSO conducted a personnel security interview (PSI) of the Individual on July 25, 2018. Ex. 15 at i. The PSI did not resolve the security concerns raised by these arrests, and the LSO subsequently recommended that the Individual undergo an evaluation by a DOE-contracted psychologist (DOE Psychologist).

---

<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.

Following a clinical interview of the Individual, the DOE Psychologist issued a psychological assessment (Report) in which she concluded that the Individual was a habitual consumer of alcohol to the point of impaired judgement and that he met the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 21 at 8.

On September 19, 2019, the LSO issued the Individual a letter in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. Ex. 2. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 3.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1. 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 hearing. The LSO submitted thirty numbered exhibits (Ex. 1–30) into the record.<sup>2</sup> The Individual submitted fourteen exhibits (Ex. A–J).<sup>3</sup> The LSO presented the testimony of the DOE Psychologist and the Individual presented the testimony of two witnesses, including his own testimony.

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

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for denying the Individual a security clearance. Ex. 3 at 1–3. Conduct involving questionable judgement, lack of candor, 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.* The Summary of Security Concerns listed as relevant facts: the Individual failed to fully disclose his history of arrests and charges for alcohol-related offenses on QNSPs that he submitted in 1997, 2007, 2011 and 2017; the Individual provided inconsistent explanations for the discrepancy on his 2017 QNSP during a PSI conducted in 2018; and, the Individual was advised during a PSI in 1997 that he was required to disclose all alcohol-related

---

<sup>2</sup> The Individual's counsel indicated during a pre-hearing telephone conference that he intended to object to the admission of Exhibits 15 and 19 into the record. During the hearing, the Individual's counsel explained that he objected to the admission of Exhibit 15, a transcript of an interview between the Individual and a security specialist employed by the LSO, on the bases that the interview was conducted in an inquisitorial manner, statements by the security specialist made the transcript more of an adverse statement than an interview, and the security specialist had not been offered as a witness and was not available for cross examination. Hearing Transcript at 9–11. I overruled this objection and admitted Exhibit 15 on the grounds that the transcript was a literal representation of the interview, the Individual's counsel had not asserted that the transcript was inaccurate or inauthentic, and that the Individual could testify as to the conditions of the interview so as to allow me to assign it the proper evidentiary weight. The Individual's counsel did not explain his objection to the admission of Exhibit 19, an excerpt from a report prepared by an Office of Personnel Management investigator concerning a background investigation into the Individual, and therefore I overruled his objection and admitted Exhibit 19.

<sup>3</sup> The Individual labeled related exhibits with a letter followed by sequential numbers. For example, affidavits submitted by character witnesses for the Individual are labeled as Exhibit H1, Exhibit H2, and so on.

offenses during security investigative processes. Ex. 3 at 1–3. The LSO’s allegations that the Individual omitted relevant facts from a personnel security questionnaire and provided misleading information to a personnel security investigator justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the second basis for denying the Individual a security clearance. Ex. 3 at 3–6. Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Summary of Security Concerns listed as relevant facts: the Individual was arrested and charged with DUI in 1996, 1997, 2001, and 2013, and cited for possessing an open container of alcohol while operating an automobile in 2000; the Individual consumed alcohol to intoxication on a monthly basis from 2008 to 2012; the Individual reported consuming alcohol to intoxication as recently as August 2019; the Individual returned to consuming alcohol after reporting in a 1997 PSI that he intended to stop drinking; and, the DOE Psychologist’s determination that the Individual habitually consumed alcohol to the point of impaired judgement and met the diagnostic criteria for AUD, Moderate, under the *DSM-5*. Ex. 3 at 3–6. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, habitually consumed alcohol to the point of impaired judgement, and was diagnosed with AUD, Moderate, by the DOE Psychologist justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the third basis for denying the Individual a security clearance. Ex. 3 at 6–8. Criminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. *Id.* The Summary of Security Concerns listed as relevant facts: the Individual admitted to having been arrested for DUI on four occasions; the Individual’s citation for an open container offense; and, eleven instances in which the Individual was cited for traffic offenses between 1999 and 2014. Ex. 3 at 6–8. The Individual’s pattern of minor offenses and the Individual’s admission that he was arrested for DUI on four occasions justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b).

### **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), 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.

#### **IV. FINDINGS OF FACT**

The Individual does not challenge the basic facts listed in the notification letter, but does challenge the DOE Psychologist’s diagnosis. In addition, the Individual attempted to explain the circumstances surrounding his DUIs and the other various criminal charges, all of which are traffic related.

The Individual was arrested for DUI in 1996, 1997, 2001, and 2013. He does not dispute these charges. In addition to the DUI charges, the Individual was charged with “open container” in 2000. As to the other criminal charges, the 1996 charge was reduced to careless and reckless driving, the 1997 charge was reduced to inattentive driving, the 2001 charge was reduced to disturbing the peace, and the 2013 charge was reduced to reckless driving. Ex. 14 at 14–15, 24; Ex. 17; Ex. 18. The Individual variously asserted that because the charges were reduced or because they were over five years old, he did not believe he needed to inform DOE on his QNSP. Ex. 14 at 16–17; Ex. 17; Tr. at 92.

Hence, on his 2017 QNSP, the Individual failed to disclose that his 1996, 1997, and 2001 DUIs and his 2000 open container charges. Ex. 26 at 1. In response to questions during a July 2018 PSI, the Individual claimed that he did not know why he had omitted the other DUIs from the 2017 QNSP. Ex. 15 at 29. This omission followed similar omissions on the Individual’s previous QNSPs in 1997, 2007, and 2011, even though he had been advised in 1997 that he needed to report all alcohol-related offenses. Ex. 14 at 17, 29.

With respect to his drinking, at the time of the 2018 PSI, the Individual reported that he had consumed an average of one to three beers once per month since 2013 and expressed the intention to keep his drinking at this limited level. Ex. 15 at 90, 110–11. However, at the hearing, he argued that his statements during the 2018 PSI were not reliable because he was nervous and felt that the interviewer “was trying to force [him] into answering something that would kind of set [him] up for failure.” Tr. at 35–37. The Individual expressed his perception that the interviewer was agitated prior to the interview and had already made up his mind that the Individual should not hold a clearance. *Id.* at 34, 38. According to the Individual, he did not believe that he was intoxicated during a 2018 camping trip that he described during 2018 PSI because he consumed six beers on one day over a period of many hours. *Id.* at 39, 46.

The Individual continued at the hearing that he had not consumed alcohol since September 2019. Tr. at 30. The Individual indicated that he had found it easy to refrain from consuming alcohol because he consumed alcohol infrequently prior to September 2019. *Id.* at 30–31. The Individual

acknowledged that he had habitually consumed alcohol to excess in the past, but asserted that aging, the resolution of personal problems in his life, and his need to care for his ill father left him too tired for drinking and that he did not intend to resume drinking. *Id.* at 71–72. The Individual admitted that he had previously returned to drinking after expressing the intention not to do so, but asserted that this time was different because in the past he was “out looking for a good time” but was now too “old [and] tired” for drinking. *Id.*

As to the criminal charges raised by the LSO which include the alcohol-related offenses addressed above, the Individual was also charged with eleven traffic offenses between 1999 and 2014. These offenses included failure to provide proof of insurance on five occasions, failure to use safety restraints on one occasion, and speeding on six occasions. There was no testimony regarding the speeding or failure to use safety restraints charges, all of which occurred prior to 2014, except that the Individual claimed he could not recall the circumstances under which he committed the traffic offenses. Tr. at 73–74. Regarding the failure to provide proof of insurance, the Individual testified that he always had insurance and “when they give you the citation for no proof of insurance, you just take a copy of your proof of insurance down to the courthouse and they waive the fee.” *Id.* at 74. The Individual denied that he was willfully disobeying the rules he deemed mundane, but said that “mistakes are made . . . and it was a real easy, really easy fix.” *Id.* at 128–29.

Following the PSI, the Individual met with the DOE Psychologist in January, 2019, for a clinical interview. Ex. 21 at 2. During his interview with the DOE Psychologist, the Individual indicated that he consumed an average of four to six beers in a month. *Id.* at 6. In addition to the interview, the Individual underwent Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) tests. A medical doctor, who reviewed the results of the tests, provided a letter to the DOE Psychologist indicating that both tests were negative, claiming that these negative test results were strong evidence that the Individual had not consumed alcohol for at least three days prior to the clinical interview and had not consumed alcohol on a regular, heavy basis for at least several weeks prior to the clinical interview. *Id.* at 13.

After the evaluation and despite the results of the EtG and PEth tests, the DOE Psychologist concluded that the Individual met the diagnostic criteria for AUD, Moderate, under the *DSM-5*. *Id.* at 7. According to the DOE Psychologist, the Individual had demonstrated a persistent desire or unsuccessful effort to cut down or control alcohol use based on his previous, unfulfilled promises to stop drinking. *Id.* at 6, 9. The DOE Psychologist’s Report noted that the Individual did not believe that he was an alcoholic, but reported having experienced withdrawal symptoms when he stopped drinking in the past and had used alcohol to relieve boredom in the twelve months prior to the interview. *Id.* at 6. The DOE Psychologist also found that the Individual demonstrated continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by alcohol, recurrent alcohol use in situations in which it is physically hazardous, and tolerance for alcohol as demonstrated by markedly diminished effect with continued use. *Id.* at 6, 9. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by participating in an outpatient program specifically intended for alcohol treatment and a twelve-step or similar recovery program. *Id.* at 7.

At the hearing, the DOE Psychologist confirmed her diagnosis. Tr. at 148. She testified that his prognosis was very poor if he did not pursue alcohol-related treatment as she had recommended.

*Id.* at 163. The DOE Psychologist concluded that the Individual was not in remission because he met numerous diagnostic criteria for AUD during the prior twelve months: (1) Alcohol is often taken in larger amounts or over a longer period than was intended as demonstrated by the Individual's decision to continue drinking until at least September 2019 even after expressing the intention to stop drinking during the 2018 PSI; (2) a persistent, unsuccessful desire to cut down or control alcohol use; (3) continuing to use alcohol despite having persistent or recurrent social or interpersonal problems caused by alcohol use; (4) recurrent use of alcohol in situations in which doing so was physically hazardous; (5) tolerance demonstrated by diminishing effects with continued use of alcohol; and (6) symptoms of withdrawal. *Id.* at 176–79, 184, 187–89, 193–96, 219.

On October 15, 2019, the Individual met with a psychologist (Individual's Psychologist) who he contracted to evaluate him in advance of the hearing. Ex. C1. The Individual reported to the Individual's Psychologist that he was an infrequent consumer of alcohol, but that he might consume up to eight beers over eight hours while camping. *Id.* at 6. The Individual did not report experiencing any adverse consequences from consuming alcohol, or consuming alcohol under any circumstances that corresponded to the diagnostic criteria for AUD under the *DSM-5*. *Id.* During the evaluation, the Individual's Psychologist administered the Minnesota Multiphasic Personality Inventory, Second Revision, Restructured Format (MMPI-2-RF) to the Individual. *Id.* The Individual's results on the MMPI-2-RF indicated an over reporting of symptoms. *Id.* at 7. Although the Individual's Psychologist's report stated that these findings may indicate that a "test taker . . . was inclined to . . . emphasize or exaggerate psychological problems . . ." the Individual's Psychologist concluded that the Individual "completed the test honestly and accurately." *Id.* The Individual's Psychologist opined that, although the Individual had met a sufficient number of diagnostic criteria within a prior twelve-month period to support diagnosing him with AUD, Moderate, the Individual did not meet any of the *DSM-5* diagnostic criteria in the twelve months prior to his evaluation of the Individual and therefore was in sustained remission. *Id.* at 7. The Individual's Psychologist further noted that abstinence from alcohol was not necessary for a person to be in sustained remission, and opined that the Individual did not demonstrate any current problems with respect to alcohol. *Id.* at 8.

The Individual's Psychologist testified that he remained convinced that the Individual's AUD was in sustained remission because the Individual had not met any of the diagnostic criteria for AUD under the *DSM-5* in the preceding twelve months. *Id.* at 227. He opined that the DOE Psychologist misapplied the diagnostic criterion concerning taking alcohol over a longer period than was intended, which the Individual's Psychologist explained concerned individual episodes of drinking lasting hours longer than intended rather than a person intending to stop drinking but continuing to do so for months thereafter. *Id.* at 180, 225. The Individual's Psychologist expressed that the Individual displayed no physical evidence of tolerance or withdrawal and had not complained of problems as a result of alcohol implicating the diagnostic criteria under the *DSM-5*. *Id.* at 224, 227. He concluded that the Individual had engaged in episodic binge drinking in the past, but that he believed that the Individual had an extremely low risk of relapse because he was not chemically dependent on alcohol. *Id.* at 234–36, 245.

## V. ANALYSIS

### **A. Guideline E**

The Individual's failure to fully disclose his history of alcohol-related offenses on QNSPs, and his inconsistent explanations for failing to fully disclose this information, raise security concerns under Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b). Two mitigating conditions under Guideline E are potentially applicable in this case. First, an individual may mitigate security concerns under Guideline E if the “individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” *Id.* at ¶ 17(a). In addition, an individual might mitigate security concerns under Guideline E if “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 judgement.” *Id.* at ¶ 17(c).

In this case, the Individual's disclosures of his record of being arrested and charged with DUI were neither prompt nor made in good faith. The Individual was specifically instructed during the 1997 PSI that he was required to disclose alcohol-related arrests and charges, regardless of the final disposition of the matter, but persisted in failing to appropriately disclose his alcohol-related arrests and citations. Moreover, even after being confronted with the facts in the 2001 LOI, the 2018 PSI, and the hearing itself, the Individual persisted in claiming that he did not believe that he was required to disclose his alcohol-related arrests and charges and that he found the questions on the QNSPs confusing.

The Individual's repeated failure to fully disclose his alcohol-related arrests and charges, representations that he was not required to disclose the incidents even in the face of direct instruction to the contrary, and his illogical pattern of disclosing one alcohol-related offense for which the charge had been reduced on QNSPs but omitting all other offenses call into question the Individual's reliability and trustworthiness. The Individual's pattern of failing to make full disclosures of his alcohol-related offenses and justifying those omissions time and again with the same excuses causes me to conclude that neither of the aforementioned mitigating conditions is applicable and that the obstinacy or deceptiveness underlying the Individual's omissions is likely to recur. Therefore, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

### **B. Guideline G**

The Individual's alcohol-related incidents away from work, habitual consumption of alcohol to the point of impaired judgement, and diagnosis of AUD all raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (c)–(d). An individual may mitigate security concerns under Guideline G if:

- (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; or,
  - (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.

*Id.* at ¶ 23(a)–(d).

*1. Concerns Related to the Diagnosis of AUD*

I find that the security concerns related to the Individual’s diagnosis of AUD, Moderate, are resolved under the first mitigating condition because I am persuaded by the opinion of the Individual’s Psychologist that the Individual has been in sustained remission for such an extended period of time that the diagnosis, in of itself, is no longer a cause for concern. *Id.* at ¶ 23(a). The *DSM-5* clearly provides that a person is in full remission from AUD if “none of the criteria for [AUD] have been met at any time during a period of 12 months of longer.” *DSM-5* at 491. I find the DOE Psychologist’s opinion that the Individual has unsuccessfully attempted to reduce or eliminate his drinking in the past year unpersuasive. The Individual indicated during the 2018 PSI that he was comfortable with his reported level of drinking and that he did not intend to stop drinking entirely. The laboratory testing provided to the DOE Psychologist supported the Individual’s claims of drinking little to no alcohol on a regular basis, and I find the DOE Psychologist’s speculation that the Individual was regularly consuming significant quantities of alcohol despite a desire to reduce his drinking inadequately founded.

Likewise, I find the DOE Psychologist’s speculation that the Individual experienced social or interpersonal impairment as a result of his drinking, used alcohol in physically hazardous situations, or experienced withdrawal within the twelve months prior to meeting with her inadequately founded to justify her conclusions. The DOE Psychologist’s Report notes that the Individual had an all-terrain vehicle accident after drinking in approximately 2014 and reported experiencing withdrawal symptoms at some point in the past when he stopped drinking, but her Report does not clearly indicate that she focused her analysis on whether the Individual met the *DSM-5* diagnostic criteria for AUD within the twelve months prior to the evaluation. Ex. 21 at 6. The Individual’s Psychologist’s report, however, clearly indicates that he specifically queried the Individual as to his symptoms and behaviors in the twelve months prior to the evaluation and determined that the Individual did not meet any of the diagnostic criteria within that period. Ex. C1 at 6. I find the Individual’s Psychologist’s opinion that the Individual has been in sustained remission for an extended period of time more persuasive than the DOE Psychologist’s opinion, and therefore find that the Individual has resolved the security concerns related to his diagnosis with AUD.

*2. Concerns Related to Habitually Consuming Alcohol to the Point of Impaired Judgement*



I also find that the Individual's prior practice of habitually consuming alcohol to the point of impaired judgement is mitigated by the passage of time and the infrequency of the behavior. *Id.* at ¶ 23(a). While the Individual may have previously consumed alcohol to intoxication on a habitual basis, the evidence strongly suggests that the Individual has infrequently consumed alcohol to the point of intoxication. The Individual reported during the 2018 PSI that he consumed alcohol to intoxication approximately once every six months. The results of the laboratory testing requested by the DOE Psychologist strongly suggest that the Individual was not consuming significant quantities of alcohol in January 2019, and the Individual represented during the hearing that he subsequently discontinued using alcohol altogether. While OHA has never endorsed the idea that there is a safe harbor number of instances in which a clearance holder can become intoxicated in one year, our prior cases have generally held that an individual become intoxicated at least once per month to conclude that he or she consumes alcohol habitually to the point of intoxication. *See Matter of Personnel Security Hearing*, OHA Case No. PSH-19-0018 at 7 (2019) (summarizing OHA case law and medical research in support of the conclusion that consuming alcohol to the point of intoxication on a monthly basis represents a security concern under Guideline G).<sup>4</sup> I am convinced that the Individual has not experienced episodes of intoxication with sufficient frequency to constitute habitual intoxication for many years, and therefore find that the Individual has mitigated this security concern.

### 3. *Concerns Related to Alcohol-Related Incidents Away from Work*

Although the Individual has convinced me that he does not habitually consume alcohol to the point of impaired judgement, the Individual's alcohol-related incidents reflect a pattern on his part of seldom engaging in drinking binges during which he exercises extremely poor judgement and reliability which present serious security concerns. The Individual went to great pains during the hearing to make clear that he has gone years at a time without becoming intoxicated, and that each of his DUIs occurred on the few occasions in which he engaged in heavy drinking following years of abstinence or controlled drinking. For example, twelve years passed without a documented alcohol-related incident after the Individual's arrest for DUI in 2001, during which time the Individual asserted that he was seldom if ever intoxicated, only for the Individual to engage in an episode of binge drinking in 2013 which resulted in his fourth DUI arrest after his BAC was measured at .16. The Individual has recognized since the 1997 PSI that, on those occasions when he binge consumes alcohol, he loses control and "always seem[s] to get in trouble" even after years of responsible behavior. In light of the Individual's inability to control himself during his rare binge episodes, I am not convinced that the mere passage of time is sufficient to mitigate the security concerns raised by the Individual's numerous alcohol-related offenses. Thus, the first mitigating condition is not applicable. Adjudicative Guidelines at ¶ 23(a).

The remaining mitigating conditions are not applicable because the Individual does not acknowledge that he has a problem with alcohol, has not pursued counseling or followed treatment recommendations that would help him gain insight into why he loses control after years of responsible behavior, and has not yet established a sufficient period of abstinence from alcohol in light of his lengthy history of relapsing into alcohol-related misconduct for me to conclude that he will not commit further alcohol-related offenses in the future. *Id.* at ¶ 23(b)–(d). Until the

---

<sup>4</sup> Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/oha>.

Individual takes appropriate steps to address the causes for his episodic lapses in judgement, I find that he represents an unacceptable security risk.

For the reasons set forth above, I find that none of the mitigating conditions under Guideline G resolve the security concerns related to the Individual's alcohol-related incidents away from work. Therefore, I conclude that the Individual has not fully resolved the security concerns asserted by the LSO under Guideline G.

### **C. Guideline J**

The Individual's alcohol-related offenses and voluminous citations for traffic offenses raise security concerns under Guideline J of the Adjudicative Guidelines. An individual may mitigate security concerns under Guideline J if:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32(a)–(d).

In this case, I find that the passage of time, a factor common to the first and fourth mitigating conditions, is not sufficient to mitigate the security concerns presented by the Individual's offenses. As discussed above, the Individual has gone for years at a time without committing an alcohol-related offense, only to reoffend after years of responsible behavior. In light of this pattern, I am not convinced that the Individual can be trusted to refrain from engaging in unlawful conduct until he addresses the reasons for his periodic lapses in judgement.

Furthermore, the circumstances of the Individual's traffic citations represent precisely the security concerns described under the Adjudicative Guidelines as "a pattern of minor offenses any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 31(a). The Individual described during the hearing how he persisted in not carrying proof of insurance, despite being cited for this omission on five separate occasions, because it was an "easy fix" to go to the courthouse and produce insurance. This pattern of disregard for rules the Individual apparently regards as petty and easily circumvented calls into question his willingness or ability to comply with laws, rules, and regulations.

As the Individual's conduct is not mitigated by the first or fourth mitigating conditions under Guideline J, and the second and third mitigating conditions are clearly inapplicable in this case, I

find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

## **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 Guidelines E, G, and J of the Adjudicative Guidelines. After considering all of the relevant information, 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 in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals