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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: May 5, 2020 ) Case No.: PSH-20-0057  
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Issued: January 7, 2021

**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 under the United States 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.”<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 be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In July 2019, the Individual was subjected to a random breath alcohol test (BAT) as part of his employment. Ex. 5. He tested positive, first at 0.034% and then, following a 15-minute waiting period, at 0.029% in a confirmatory test.<sup>2</sup> *Id.* at 5. Following a two-day suspension, the Individual was again subjected to a BAT, which indicated a result of 0.017%. Ex. 9. The Individual attributed this result to his use of mouthwash prior to undergoing the test. Ex. 11. Following these events, the Individual underwent a psychological evaluation by a DOE contractor psychologist (Psychologist) in August 2019. Ex. 13. The Psychologist found “insufficient data to support the presence of a diagnosable mental health disorder or condition,” but recommended that the Individual remain abstinent for six months. *Id.* He further noted that the 0.017% BAT could not be attributed to the use of mouthwash. *Id.* Subsequently, in December 2019, after learning that the Individual reported attending outpatient counseling “for the purpose of improving emotional

<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.

<sup>2</sup> Per the terms of his employment, a BAT result of 0.02% or higher is considered a “positive” test result. Ex. 4. As such, I will refer to the 0.029% and the 0.034% BAT results as “positive” throughout the decision.

regulation within the context of substance use/abuse relapse prevention,” the Psychologist diagnosed the Individual with Alcohol Use, Moderate, in early remission. Ex. 20. However, upon learning that the Individual had subsequently consumed alcohol, he removed the “diagnostic qualifier” of “in early remission.” *See* Exs. 15-16.

Due to unresolved security concerns stemming from the above information, the LSO informed the Individual, in a Notification Letter dated April 2, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s 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 E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

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 25 numbered exhibits (Exhibits 1-25) into the record and presented the testimony of three witnesses, including the Psychologist. The Individual introduced one lettered exhibit (Exhibit A) into the record and presented his own testimony. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate 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) (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 Guideline E and Guideline G of the Adjudicative Guidelines. Guideline E concerns "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations." Guideline E at ¶ 15. This conduct can call into question an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* Guideline G relates to security risks arising from excessive alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness. Guideline G at ¶ 21.

In citing Guidelines E and G, the LSO relied upon: (1) the Individual's positive BAT and the subsequent BAT of 0.017%, along with the Psychologist's opinion that the latter result could not be attributed to the use of mouthwash; (2) the Individual's return to alcohol consumption following a statement to the Psychologist that he intended to remain abstinent from alcohol for the foreseeable future; (3) the Psychologist's December 2019 diagnosis of Alcohol Use Disorder, Moderate, in early remission, following the Individual's report that he had enrolled in substance abuse counseling; (4) the Psychologist's determination that the "diagnostic qualifier of 'in early remission'" would be removed should the Individual return to consuming alcohol (5) the Individual's "inconsistent and contradictory accounts of his alcohol use" to his employer and the Psychologist; (6) the Individual's reports, in an Enhanced Subject Interview, that his wife disapproved of his alcohol consumption, and it created "an issue" within their marriage; (7) the Individual's participation in substance abuse counseling; and (8) the Individual's commitments to abstain from alcohol consumption and his subsequent failure to maintain such commitments.

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

As stated above, in July 2019, the Individual's employer required him to undergo a random BAT. Ex. 4. The Individual tested positive with a result of 0.034%. Ex. 5. Following a 15-minute waiting period, the Individual's BAT showed a result of 0.029%. *Id.* The Individual's employer suspended him for two days, and upon his return, again required him to undergo a BAT. Exs. 9, 12. The result for this BAT was a 0.017%. Ex. 9. The Individual attributed this result to his use of mouthwash earlier in the morning. Ex. 11.

In August 2019, the Psychologist conducted an evaluation of the Individual. Ex. 13. During the evaluation, the Individual reported that he consumed approximately two or three beers per week, and further noted that his wife disapproves of his alcohol use. *Id.* at 2. The Individual explained that, prior to testing positive for alcohol, he consumed "two small bottles of Hobble Creek, a lightly alcoholic beverage," on an empty stomach, and went to sleep. *Id.* He awoke later the same day, reported to work, and underwent the BAT. *Id.* The Psychologist noted that approximately eight to nine hours elapsed between the Individual's alcohol consumption and him reporting to work. *Id.* The Psychologist's report added that, two days later, after returning from the work suspension, the Individual reported for another BAT, and it returned results of 0.017%, which the Individual attributed to his use of mouthwash. *Id.* The Individual denied the consumption of any alcohol in the 24 hours prior to the test. *Id.*

The Psychologist opined that the Individual “appeared to be honest and open,” and “candid” regarding his alcohol consumption on the day of the positive BAT; yet, he simultaneously expressed concern about the Individual’s veracity and whether the Individual “may have under-reported his use of alcohol in terms of amount and frequency.” *Id.* at 1, 3. Initially, the report notes that the Individual committed to “limit[ing] his alcohol consumption, and [e]nsur[ing] that he did not consume alcohol within 12 hours of a scheduled shift.” *Id.* at 36. However, the report also notes that the Individual “stated his intent to remain abstinent from alcohol for the foreseeable future.” *Id.* at 39. Ultimately the Psychologist determined that “[n]othing in documentation indicated [the Individual] has an alcohol use disorder.” *Id.* at 3. The Psychologist further reported that the Individual expressed remorse and did not attempt to excuse his behavior. *Id.* The Psychologist recommended abstinence for a period of at least six months. *Id.*

In early December 2019, a Personnel Security Officer (PSO) reported that the Individual came to her office and provided her with documentation that, as of late July 2019, he had been receiving treatment from a counselor for “substance use/relapse prevention.” Ex. 15. According to the PSO, the Individual reported that he had become abstinent from alcohol, as “nothing good comes from it.” *Id.* He additionally indicated that he had attended eight Alcoholics Anonymous (AA) meetings. *Id.*

After receiving this information, the Psychologist conducted a second evaluation in late December 2019, diagnosing the Individual with Alcohol Use Disorder, Moderate, in early remission. Ex. 20. The report indicated that the Individual is “a self-described alcoholic” and had “been abstinent for several weeks.” *Id.* He noted that “denial and poor judgment are integral parts of an alcohol use disorder,” and he suggested that the Individual’s “clearance should be conditional upon [his] commitment to remain alcohol abstinent.” *Id.*

In early January, the PSO requested to speak with the Individual. Ex. 15. She documented the phone call and noted that the Individual had not yet received the report following the second psychological evaluation. *Id.* According to the PSO’s notes, the Individual informed her that he had resumed consuming alcohol but was not doing so during his scheduled work rotation. *Id.* She also noted that the Individual had reported that the Psychologist was aware of his decision to begin consuming alcohol again and did not express concern. *Id.* The Psychologist was later contacted via email and replied that, if the Individual had “resumed drinking,” the “diagnostic qualifier” of “in early remission” would no longer apply to his late December diagnosis. Ex. 16.

During the hearing, the Individual testified that he and his wife grew up in religious homes that did not condone the use of alcohol. Tr. at 55. He explained that, although he did not share this belief, his wife remained adamant that alcohol should not be brought into their home. *Id.* at 56. He described that these differing views contributed to problems in their marriage; however, there were never any instances of violence or abuse, alcohol related or otherwise. *Id.*

The Individual did not dispute that he consumed alcohol on the day he tested positive on the BAT, nor does he dispute the test results. *Id.* at 77. With regard to the BAT following his suspension, the Individual denied consuming any alcohol that day or the evening prior. *Id.* at 72. However, he asserted that he used mouthwash upon his arrival to work, as was his normal routine. *Id.* at 62. He does not recall the amount of time that elapsed between using the mouthwash and taking the BAT, but he estimates that it was an approximately 15-minute drive to the testing facility, indicating that

there was at least a 15 minute time gap between using the mouthwash and undergoing the BAT. *Id.* at 72.

In testifying as to his counseling sessions and AA attendance, the Individual explained that, upon receiving a positive BAT, his employer presented him with a brochure for the Employee Assistance Program (EAP).<sup>3</sup> *Id.* at 67. He explained that, initially, he did not feel that he needed assistance, but after considering it further, he thought: “I could actually use this because what I’d really like to do is stop drinking altogether, and if I do this and if I learn a lot about alcoholism, maybe I can even find a way to hate it as much as my wife does.” *Id.* He made clear that he had not been ordered to engage in counseling or AA but did so on a voluntary basis. *Id.* at 65-66. The Individual testified that he informed his counselor that he wanted to “learn about alcoholism, [and] the dangers that come with it.” *Id.* at 65. He explained that, after he became educated, his “eyes got opened,” and he chose to become involved in AA; however, he clarified that he has never considered himself to be an alcoholic and never made such a statement to the Psychologist. *Id.* at 65, 69, 84. He noted that he attended ten counseling sessions through the EAP and subsequently decided to attend an additional ten sessions due to the stress he was feeling as a result of the impact the positive BAT had on his life.<sup>4</sup> *Id.* at 68, 75; *see* Ex. 14, Ex. A.

The Individual acknowledged that he informed the Psychologist in their August meeting that his “goal would be to stop [consuming alcohol] altogether,” and additionally, he noted that he made the determination on his own that he could consume alcohol again as long as it was not within 12 hours of him going on duty. *Id.* at 101. He clarified that although he began consuming alcohol following the August 2019 evaluation, it was never to the level of intoxication. *Id.* at 93. The Individual testified that it had been about a year since he had last consumed alcohol. *Id.* at 57, 59, 92, 99. He further stated that he does not believe he will resume consuming alcohol because although it is a “nice to have;...it just doesn’t do a whole lot of good.” *Id.* at 70. The Individual explained that, as a result of his positive BAT, he is ashamed of himself, and he intends to remain abstinent from alcohol. *Id.* at 75.

The DOE presented the testimony of a breath alcohol technician and trainer (Technician). *Id.* at 15-16. The Technician explained that the goal of the BAT is to obtain a “deep lung air sample” in order to get an accurate reading, as opposed to capturing “residual mouth alcohol.”<sup>5</sup> *See id.* at 20, 26. The Technician explained that alcohol resides at the base of a person’s lungs. *Id.* at 20. In addressing the process of conducting BATs, the Technician explained that when a test subject’s result as a 0.020% or higher, which is considered to be a positive result, the testing device instructs that the test subject undergo a 15-minute waiting period before another screening confirmation test is conducted. *Id.* at 21. This waiting period ensures that “if there is any residual alcohol, it has time

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<sup>3</sup> This statement is supported by the testimony of the PSO. Tr. at 42.

<sup>4</sup> The Individual submitted a letter from his counselor attesting to their work together and the Individual’s “commitment” and “tremendous drive.” Ex. A. The letter additionally states that the Individual “appears to be entering ‘sustained remission,’” and it generally discussed that “substance use disorder is a very common diagnosis.” *Id.* However, the counselor does not provide a specific diagnosis for the Individual, nor does she explain any circumstances leading to any such diagnosis. *Id.* As such, and given that I was not afforded the opportunity to question the counselor as a witness during the hearing, I do not afford this exhibit much weight. *Id.*

<sup>5</sup> The Technician testified that “residual mouth alcohol” could be attributable to breath spray, gum, candy, mints, or other substances that may be present in the test subject’s mouth. Tr. at 27-28.

to dissipate,” ensuring that the test is only capturing a “deep lung sample.”<sup>6</sup> *Id.* at 21. If, however, a BAT result is below 0.020%, as it was in the Individual’s 0.017% BAT, following his suspension, the machine does not perform the confirmation test, as the result does not meet the 0.020% threshold. *Id.* at 24-26. The Technician clarified that in his experience, a result of 0.017% is typically due to the test subject using “some sort of mouth rinse” before undergoing the test. *Id.* at 31.

The Psychologist testified that he had two concerns: the Individual’s alcohol use and his veracity. *Id.* at 113. He felt that there was inconsistent information in the case, and he further articulated that, although he did not necessarily believe the Individual was lying about his abstinence from alcohol over the past year, based on his experience evaluating people with alcohol use disorders, he “would have doubts about any individual making this kind of claim.” *Id.* at 113, 128. Although the Psychologist did not explicitly explain the “inconsistent information” he was referring to, he appears to be referencing the breaks in the Individual’s abstinence from alcohol. *See* Tr. at 110-113. Specifically, although the Individual reported to the PSO that he had consumed alcohol between his August and December evaluations, he reported to the Psychologist that he was “alcohol abstinent” at that time. *Id.* at 110. The Psychologist acknowledged that he drew an “inference” that the Individual had not consumed alcohol since their August meeting. *Id.* at 110-111. The Psychologist additionally testified that, based upon his research, it was “very unlikely” that the Individual’s 0.017% was attributable to mouthwash. *Id.* at 108. He recounted that his research showed that after 15 to 20 minutes have elapsed, there is not enough residual alcohol in the body to create a positive BAT. *Id.* at 108-109.

The Psychologist confirmed that he did not diagnose the Individual with an alcohol use disorder following the August 2019 evaluation. *Id.* at 132. When asked why he would diagnose the Individual with Alcohol Use Disorder, Moderate, in Early Remission, after the Individual completed an alcohol treatment program and began attending AA, the Psychologist cited the Individual’s statement that “I’m seeking treatment. I’m going to AA meetings. I’m an alcoholic in recovery.” The Psychologist then stated, “I sort of ha[d] to believe him.” *Id.* at 135. When I asked the Psychologist if he could further enlighten me to why he changed his diagnosis, Psychologist stated, “I’m not sure I can.” *Id.* The Psychologist acknowledged that the Individual’s drive to seek more information with regard to his alcohol use was a positive plan of action; yet, he simultaneously noted the “irony” of that very act being used to endanger his eligibility to hold a clearance. *Id.* at 141-142.

## 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 sufficiently mitigated the security concerns noted by the LSO with regard to Guidelines E and G. I find that restoring the Individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national

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<sup>6</sup> The Technician testified that, in his experience, substances such as mouthwash, dissipate from a subject’s breath in approximately five minutes. Tr. at 29.

interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should be restored. The specific findings that I make in support of this decision are discussed below. Due to the interconnected nature of the Guideline E and Guideline G security concerns, I will analyze them together.

Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, regardless of whether the Individual is diagnosed with an alcohol use disorder, or a diagnosis by a duly qualified mental health provider of an alcohol use disorder, may raise a disqualifying security concern. Guideline G at ¶ 22(b), (d). If an individual acknowledges his pattern of maladaptive alcohol use, provides evidence of actions taken to overcome the problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, he may be able to mitigate the security concern. *Id.* ¶ 23(b).

Conduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See* Guideline E at ¶ 15. Deliberately omitting, concealing, or falsifying relevant facts from any personnel security questionnaire can disqualify an individual from holding access authorization. *Id.* at ¶ 16(a). Under Guideline E, conditions that may mitigate security concerns include that "the information was unsubstantiated." Guideline E at ¶ 17(f).

As I have noted previously, the LSO cited numerous security concerns. I will first address the Psychologist's diagnosis of the Alcohol Use Disorder, Moderate, and his subsequent decision to remove the diagnostic qualifier of "in early remission," as I find this to be the most troubling aspect of this case. When the Individual first visited the Psychologist in August 2019, the Individual had previously tested positive for alcohol while on duty; yet despite this alcohol related incident, the Psychologist attributed it to "circumstantial factors, lack of time awareness, and poor judgment," and he found no "no diagnosable mental health disorder or condition." Ex. 13. He did not recommend treatment, alcohol education, or AA attendance, but he did suggest that the Individual abstain from alcohol for six months. *Id.*

After being provided with information from his employer about EAP, the Individual took it upon himself to seek out education about alcohol use and the dangers that can come from it. He subsequently returned to the Psychologist for evaluation, who then, despite there being no further incidents or problems resulting from alcohol use, determined that that Individual had an alcohol use disorder because he "sort of ha[d] to believe" the Individual.<sup>7</sup> Tr. at 135. When I asked him to help me understand this turn of events, the Psychologist stated that he could not. *Id.* at 141. I cannot find that this diagnosis is supported or credible, based upon the Psychologist's hearing testimony. I also note, in this regard, that there was no evidence of any intervening problematic event related to alcohol.

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<sup>7</sup> Although the Psychologist claims that the Individual described himself as an alcoholic, the Individual claims that he has never described himself as such, and given that the Psychologist acknowledged that there were other possible miscommunications in the December 2019 evaluation, I find the Individual's testimony to be credible. Tr. at 69, 110, 141.

In examining the BAT tests, I initially note that the BAT following the suspension was not a “positive” test, and there is credible evidence within the record that it is unlikely that this test result could be attributable to the Individual’s consumption of alcohol. The DOE’s own BAT technician testified that he has never seen such a result arise from alcohol consumption. The Individual stated that he used mouthwash prior to the 0.017% BAT, and the Technician testified that such a result is likely attributed to a mouth rinse. *Id.* at 31. To the extent that the Psychologist disagrees, I note that he concedes that he is not a physician or BAT technician. Tr. at 31, 118. Turning to the positive BATs, the Individual does not deny that he consumed alcohol prior to his shift, nor does he attempt to make excuses for his behavior. He accepts full responsibility and openly expresses shame for his choices and actions. Since this time, he has voluntarily completed twenty counseling sessions and began attending AA. Additionally, he has made the decision to abstain from alcohol and has been abstinent for approximately one year. I can find no credible information in the record to make me doubt the Individual’s claims of abstinence.<sup>8</sup> See Guideline G at ¶ 23(b).

I find the remaining security concerns arising from the Individual’s use of alcohol to be mitigated. Insofar as the LSO cited the Individual’s inconsistent and contradictory accounts of his alcohol usage, the Psychologist recognizes that he made assumptions and inferences based upon his conversation with the Individual but did not confirm the information. Guideline E at ¶ 17(f). As far as the security concerns arising from the Individual’s commitment to abstaining from alcohol during his August 2019 psychological evaluation, the Psychologist’s report of this commitment appears to be inconsistent. *Id.* Initially, the report notes that the Individual committed to “limit[ing] his alcohol consumption, and [e]nsur[ing] that he did not consume alcohol within 12 hours of a scheduled shift.” Later, the report cites that the Individual “stated his intent to remain abstinent from alcohol for the foreseeable future.” The Individual indicated that his “goal” was to cease consumption of alcohol. Although the Psychologist did recommend abstinence from alcohol for six months, I note that he did not diagnose the Individual with any disorder stemming from alcohol usage. Ultimately, I find these security concerns to be mitigated, as the Individual has now been abstinent from alcohol for approximately one year, with no evidence of relapse, has completed alcohol counseling, attended AA, and testified that he has no intention of consuming alcohol in the future. Guideline G at ¶ 23(b).

Finally, insofar as the LSO cites the Individual’s wife’s disapproval of his use of alcohol, the record indicates that the Individual’s alcohol use has not caused financial problems or violence within the marriage. It appears that the marital problems associated with the Individual’s alcohol use stem solely from the wife’s personal opinions of alcohol being in conflict with those of the Individual. I cannot find that a mere disagreement between a married couple rises to the level of creating a security concern.

Based upon the evidence in the record before me at this time, I find that the Individual has adequately established that restoring his security clearance will not endanger the common defense and security, and that doing so is clearly consistent with the national interest. Thus, I conclude that the Individual has sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline E and Guideline G.

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<sup>8</sup> To the extent that the Psychologist doubts the Individual veracity in this regard, he provides no explanation specifically pertaining to the Individual and his personal experience with alcohol.



## **VI. Conclusion**

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 concerns associated with Guideline E and Guideline G. Accordingly, I have determined that the Individual's access authorization should 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