

Edition (“DSM-5”). Ex. 6 at 1, 7. The DOE Psychologist additionally concluded that there was not sufficient evidence of the Individual’s rehabilitation or reformation. *Id.*

Following the evaluation by the DOE Psychologist, the LSO began the present administrative review by issuing a Notification Letter to the Individual informing him that information in the DOE’s possession had created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that this information raised security concerns under Guidelines G and J of the Adjudicative Guidelines. Ex. 1 at 1-2. Guidelines G and J, respectively, regard alcohol consumption and criminal conduct. The Notification Letter also informed the Individual that, pursuant to 10 C.F.R. § 710.21, he was entitled to a hearing before an Administrative Judge.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on August 21, 2018. On October 22, 2018, I conducted an administrative hearing concerning the matter. At the hearing, I took testimony from the Individual, his wife, his therapist, and the DOE Psychologist. The LSO introduced 10 numbered exhibits into the record, marked as Exhibits 1 through 10. The Individual introduced six lettered exhibits into the record, marked as Exhibits A through F.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines G and J of the Adjudicative Guidelines.

Guideline G of the Adjudicative Guidelines, titled “Alcohol Consumption,” provides that “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Guideline G at ¶ 21. Under Guideline G, alcohol-related incidents such as driving under the influence can raise a security concern. *Id.* at ¶ 22(a). Habitual or binge consumption of alcohol to the point of impaired judgment, or diagnosis of an alcohol use disorder by a duly qualified mental health professional, can also raise a security concern. *See id.* at ¶ 22(d).

As support for its application of Guideline G, the LSO relied upon the DOE Psychologist’s diagnosis of the Individual with Alcohol Use Disorder, Mild, under the DSM-5, without evidence of rehabilitation or reformation. Ex. 1 at 1. The LSO further cited the DOE Psychologist’s conclusion that the Individual was continuing to binge consume alcohol and drink habitually to the point of impaired judgment. *Id.* The LSO also alleged that the Individual had been arrested and charged with five alcohol-related offenses between 1990 and 2015, including Driving Under the Influence (DUI) in June 1990 and Driving While Intoxicated (DWI) in November 2015. *Id.* at 1-2. Finally, the LSO alleged that the Individual had admitted, in his PSI, to: (1) drinking to intoxication every day from March 2011 to February 2013; and (2) regularly driving, between 1992 and 2012, with a blood alcohol concentration over the legal limit. *Id.* at 2. The Individual’s involvement in alcohol-related incidents away from work, the DOE Psychologist’s conclusion that

the Individual was binge consuming alcohol and habitually drinking to the point of impaired judgment, and the DOE Psychologist's conclusion that the Individual met the diagnostic criteria for Alcohol Use Disorder, Mild, under the *DSM-5* all justify the LSO's invocation of Guideline G.

Guideline J of the Adjudicative Guidelines, "Criminal Conduct," provides that "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness" and "calls into question a person's ability or willingness to comply with laws, rules, and regulations." Guideline J at ¶ 30. A pattern of minor offenses, or evidence of criminal conduct regardless of whether the individual was formally charged, prosecuted, or convicted, can raise security concerns under Guideline J. Guideline J at ¶ 31(a), (b). In support of its application of Guideline J, the Notification Letter listed the Individual's five alcohol-related arrests and his admission to routinely driving, from 1992 to 2012, with a blood alcohol concentration over the legal limit. Ex. 1 at 2. These allegations justify the LSO's invocation of Guideline J.

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

A. History of Alcohol Use

The Individual began drinking alcohol while in high school, at which time he would consume up to three 12-ounce beers around once per week. Ex. 9 at 77, 79. The Individual's drinking increased while he was in college, when he consumed approximately a pint of hard alcohol approximately once every two weeks. *Id.* at 81-83. While still in college, the Individual shifted from drinking hard alcohol to consuming about six 12-ounce beers approximately once per week. *Id.* at 85-86. From 2003 to 2007, when the Individual was in his late 20s and early 30s, he consumed

approximately 10 drinks at social gatherings about once or twice per week. *Id.* at 90–94. After somewhat reducing his drinking between 2007 and 2011, the Individual and his former wife entered a period of marital difficulties that led to a divorce. *Id.* at 94-98; Ex. 8 at 20-21. Between March 2011 and February 2013, the Individual drank approximately two half-pints of hard liquor and six 12-ounce beers every evening after work, often passing out. Ex. 9 at 99-101.

The Individual subsequently met his current wife, whom he married in 2014. *Id.* at 101; Transcript (“Tr.”) at 17. Since around that time, the Individual has reduced his drinking, although he has provided somewhat inconsistent information regarding the amount and frequency. During his PSI in February 2018, the Individual stated that, since around 2014, he had been drinking about six 12-ounce beers about once every three weeks. Ex. 9 at 107-108, 113-114. During the hearing, however, the Individual and wife testified that, in the period between 2014 and February 2018, he had consumed about four to six beers about two or three times per week. Tr. at 17, 52-53. Additionally, in his PSI, the Individual indicated that he had been drinking to intoxication, consuming around six to eight beers, about once every three months. Ex. 9 at 114. Nevertheless, in a meeting with the DOE Psychologist in April 2018, the Individual stated that he was drinking to intoxication once every three weeks. Ex. 6 at 6.

B. Alcohol-Related Arrests

The Individual does not contest the LSO’s assertions in the Notification Letter regarding his criminal history. *See* Ex. 2 at 1. The Individual’s first alcohol-related arrest occurred around June 1990, when the Individual was pulled over for speeding and then arrested and charged with DUI. Ex. 8 at 36; Ex. 9 at 46–48. The Individual’s next alcohol-related arrest was around June 1991, when he was arrested and charged with being a minor in possession of alcohol. Ex. 8 at 37; Ex. 9 at 50. Around October 1991, the Individual was arrested for public intoxication. Ex. 8 at 37; Ex. 9 at 52. The Individual was arrested and charged with being a party to a crime around October 1992, after he gave his car keys to a friend following a night of drinking and the intoxicated friend drove the car into a ditch. Ex. 8 at 38; Ex. 9 at 53, 65-66.

The Individual’s next alcohol-related arrest, for Aggravated DWI, did not occur until November 2015, more than 20 years later. *See* Ex. 8 at 34; Ex. 9 at 55. However, the Individual indicated in his PSI that, during this time period, he drove while intoxicated “plenty” of times. Ex. 9 at 32. Between 1992 and 2002, when the Individual was in his 20s, he drove while intoxicated approximately once every two weeks. *Id.* at 33–35; Ex. 8 at 5. On these occasions, he might consume around three or four 12-ounce beers, and occasionally a shot of hard alcohol, before driving his vehicle. Ex. 9 at 33-34. The Individual estimated that, between 2002 and 2012, when he was in his 30s, he would drive while intoxicated approximately once per month and that he might drink six to twelve 12-ounce beers over the course of an evening before driving. *Id.* at 35-36. During the hearing, the Individual acknowledged that he may have driven in a legally intoxicated condition around 380 times in his life. Tr. at 49.

The Individual stated in his PSI that he significantly reduced the frequency of his drinking and driving in 2012, when he turned 40 years old. Ex. 9 at 37–38. However, on November 7, 2015, the Individual was arrested and charged with Aggravated DWI. Ex. 8 at 35; Ex. 9 at 8. The Individual claims that he consumed one large beer and some cough syrup about 90 minutes before he was

arrested. Ex. 9 at 8-9, 26-29; Tr. at 50. When a law enforcement officer pulled over the Individual for erratic driving, the Individual refused to participate in a field sobriety test or to take a Breathalyzer test. *Id.* at 8–13, 25. The Individual explained in his PSI that he refused to take the tests because he had consumed the cough syrup and “didn’t feel right.” *Id.* at 11. The Aggravated DWI charges against the Individual were dismissed by a court after the arresting officer failed to cooperate with the prosecuting district attorney. *Id.* at 21. The Individual stated during his PSI that consuming beer and cough syrup “probably wasn’t the best idea in the world,” but maintained that he had only consumed one pint of beer and was not guilty of Aggravated DWI. *Id.* at 25–26, 29.

Following the Aggravated DWI charge, the Individual’s employer required him to attend about five alcohol counseling sessions. *Id.* at 140–41. OPM’s report on its investigation of the Individual states that the counselor recommended that the Individual abstain from alcohol. Ex. 10 at 101. The Individual recalled a different recommendation, namely that he reduce his alcohol consumption to no more than four drinks at a time. Ex. 9 at 143; *see also* Ex. 6 at 7. He explained, during his PSI, that he had decided not to follow this recommendation because he found four drinks inadequate to produce any effect on him, and because he did not consider it worthwhile to drink without experiencing a change in mood. *Id.* at 143–45. At the time of the PSI, he described his drinking as in “a good place” and added that he did not intend to ever stop drinking completely. *Id.* at 137.

C. DOE Psychologist’s Evaluation

As observed, following the PSI, the LSO requested an evaluation of the Individual by the DOE Psychologist. Ex. 3 at 1. The DOE Psychologist met with the Individual on April 5, 2018, and issued a report on May 1, 2018. Ex. 6 at 1. At the meeting, the Individual described his past and present alcohol use, including that he was drinking to the point of legal intoxication about once every three weeks. *Id.* at 3-6. The DOE Psychologist required the Individual to undergo a Phosphatidylethanol (“PEth”) test, the results of which were positive at a level of 403 nanograms per milliliter of blood. *Id.* at 6. The DOE Psychologist determined that this result was consistent with regular, heavy alcohol consumption. *Id.* The DOE Psychologist also observed that the Individual had cravings for alcohol and had developed a significant alcohol tolerance. *Id.*

Taking into account all this evidence, the DOE Psychologist concluded that the Individual was a habitual and binge consumer of alcohol, and that the Individual met the diagnostic criteria for Alcohol Use Disorder, Mild, under the *DSM-5*. *Id.* at 7. The DOE Psychologist determined that “[t]here is no evidence of reform or rehabilitation.” *Id.* He found that the Individual could demonstrate rehabilitation or reform by abstaining from alcohol for one year and signing an agreement to do so, undergoing monthly PEth tests until he tested negative, and participating in an alcohol treatment program for at least six months. *Id.* He added that the treatment program should include individual counseling as well as self-help meetings in a group format. *Id.*

D. Recovery and Rehabilitation Process

The Individual testified during the hearing that he had last consumed alcohol on July 21, 2018. Tr. at 29. The Individual’s wife corroborated that he was abstaining from alcohol and testified that she last saw him consume alcohol in late July 2018. *Id.* at 12. According to the Individual’s wife, the Individual’s demeanor has somewhat improved since he stopped consuming alcohol. *Id.* at 16.

To establish that he had been maintaining his sobriety, the Individual offered the results of two PEth tests, the first conducted on September 12, 2018, and the second conducted on October 4, 2018. Ex. C at 1; Ex. D at 1; Ex. E. at 1. The October PEth test was negative. Ex. E at 1. However, the September PEth test was positive and indicated a value of 30. *Id.* The DOE Psychologist testified at the hearing that the results of the September PEth test “could be” consistent with the Individual’s testimony that he last consumed alcohol in late-July 2018. Tr. at 93. The DOE Psychologist further testified that he believed that the Individual either consumed a small amount of alcohol after July 21, 2018, or had consumed alcohol heavily before July 21, 2018. *Id.*

The Individual has offered evidence of additional steps he is taking to support his recovery. On July 16, 2018, the Individual met with an Employee Assistance Program (EAP) counselor. *Id.* at 31. As of the date of the hearing, the Individual had completed an alcohol awareness training consisting of eight one-hour sessions with the EAP counselor. Ex. A at 1; Tr. at 31-32. The EAP counselor recommended an alcohol treatment program to the Individual. Tr. at 32. The Individual joined the treatment program, which consists of weekly group sessions as well as monthly one-on-one meetings with a therapist. *Id.* at 32, 66. The Individual had attended six group meetings in the treatment program, and had met twice with the therapist, as of the date of the hearing. *Id.* at 32. The treatment program had not asked the Individual to sign an agreement to remain abstinent for a year, as recommended by the DOE Psychologist, although the Individual’s therapist planned to request this of the Individual. *Id.* at 93. The Individual testified that the treatment program had taught him to identify activities and thoughts that triggered him to drink, and to develop coping mechanisms to control his desire to drink. *Id.* at 36–38. He expressed that it was “still real early in the rehabilitation process” and that he was still learning these coping mechanisms. *Id.* at 38. At the hearing, the Individual and his wife also identified other aspects of his life that may support his recovery, such as his church participation and Bible study. *Id.* at 22-24, 56-57.

The Individual’s testimony suggests that he has changed the way he thinks about his alcohol consumption. He acknowledged that he had a problem with alcohol, expressed his desire to overcome that problem, and indicated that he intended to abstain from alcohol indefinitely. *Id.* at 39, 44. He stated that he does not believe that he could return to drinking in moderation. *Id.* at 44. The Individual acknowledged that he had understated his drinking during the PSI, but appeared to attribute this to his misunderstanding of the questions he was being asked. *See id.* at 52.

The Individual’s therapist also testified at the hearing. The therapist indicated that, when he first met with the Individual in August 2018, he diagnosed the Individual with Alcohol Use Disorder, Moderate. *Id.* at 67, 77. The therapist testified that the Individual had attended all scheduled group and individual meetings, and was an active participant in all of the sessions. *Id.* at 70–71. The therapist further opined that the Individual was “right on track” in his recovery and meeting all of the expectations of the treatment program. *Id.* at 73–74. Nevertheless, the therapist cautioned that the Individual was in a “honeymoon” period and that the challenges of recovery would “heat up again probably around the six-month mark.” *Id.* at 73. He expressed hope that the Individual’s risk of relapse would decrease significantly in another four or five months. *Id.* at 73–75. According to the therapist, the Individual will participate in the treatment program for about six months. *Id.* at 70. This will be followed by aftercare tailored to the Individual’s needs. *Id.* at 70, 74-75.

The DOE Psychologist was present for the entirety of the hearing and testified after having listened to the testimony of the Individual's wife, the Individual, and the Individual's therapist. The DOE Psychologist opined that, had he known all of the information brought forth during the hearing at the time he was evaluating the Individual, he might have diagnosed the Individual with Alcohol Use Disorder, Moderate. *Id.* at 92. The DOE Psychologist further testified that the Individual's approximate three months of abstinence from alcohol was not enough time to establish his rehabilitation or reformation. *Id.* at 94. Three months was insufficient, the DOE Psychologist asserted, both because of the Individual's "long history" of trouble with alcohol and because significantly more than 90 days of abstinence is typically required for individuals to "cement . . . clear thinking so they can make more rational decisions about their substance use." *Id.* at 95. The DOE Psychologist again recommended that the Individual complete one year of abstinence, and further recommended that the Individual undergo six months of aftercare following completion of the six-month alcohol treatment program. *Id.* at 94–95. In light of the Individual's short period of abstinence from alcohol as of the date of the hearing, the DOE Psychologist characterized the prognosis for the Individual's continued abstinence as "guarded." *Id.* at 96.

V. ANALYSIS

A. Guideline G Considerations

The Individual does not contest the facts set forth in the Notification Letter, but instead asserts that he has mitigated the security concerns raised by his alcohol consumption. *Id.* at 9. Specifically, the Individual contends that two of the mitigating conditions set forth in Guideline G of the Adjudicative Guidelines should apply in the instant matter. *Id.*

The first condition that the Individual claims is applicable is when a person "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." Guideline G at ¶ 23(b); Tr. at 9. The Individual acknowledged his alcohol problem during the hearing, and he has taken steps to overcome this problem by meeting with the EAP counselor, participating in the treatment program, and abstaining from alcohol. However, the Individual had abstained from alcohol for fewer than three full months as of the hearing date. Both the DOE Psychologist and Individual's therapist opined that the Individual was in the early stages of recovery. Even the Individual described himself as in the early part of his rehabilitation process. Given the Individual's long history of problematic alcohol consumption, more time is needed for the Individual's risk of relapse to decrease. Therefore, I conclude that the Individual has not demonstrated a "clear and established pattern" of abstinence from alcohol and that this mitigating factor does not apply.

Another condition that the Individual argues is relevant is when a person "is participating in a counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program." Guideline G at ¶ 23(c); Tr. at 9. In the instant matter, the Individual is participating in a counseling or treatment program. Although he arguably has no history of treatment and relapse, he does not have a well-established history of following treatment recommendations; it is noteworthy that a counselor recommended that the Individual modify his drinking habits after his 2015 arrest for Aggravated DWI, but that the Individual declined to do

so. Further, it is too early in the Individual's recovery to conclude that he is making "satisfactory progress" in his treatment program. The short period of time that the Individual has abstained from alcohol and pursued treatment is simply not enough to outweigh his decades of excessive alcohol consumption, or to establish that he is unlikely to relapse in the near future.

Guideline G further provides that security concerns regarding alcohol consumption can be mitigated when the conduct occurred a long time ago, was infrequent, or occurred under unusual circumstances. Guideline G at ¶ 23(a). Security concerns can also be mitigated when the individual has completed a treatment program and any required aftercare and has demonstrated a clear and established pattern of modified consumption or abstinence. *Id.* at ¶ 23(a). None of these other conditions is applicable. Accordingly, for the foregoing reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline J Considerations

With respect to Guideline J, the Individual contends that Guideline J at ¶ 32(d) is applicable. Tr. at 9. As the Individual noted at the hearing, this provision indicates that evidence of successful rehabilitation from criminal conduct can include circumstances in which a person obtains higher education or establishes a good employment record. *Id.* The Individual has received higher education, earning an Associate's degree in 2006. Ex. 8 at 11. The Individual's supervisor also submitted a letter indicating that the Individual is a valuable and trusted employee. Ex. B at 1-2. These facts, however, do little to mitigate the criminal conduct at issue. Obtaining higher education or becoming a successful employee, following criminal conduct, could in some instances demonstrate that an individual has embarked on a new path that makes criminal activity less likely. This condition has less relevance here, where the individual's higher education preceded much of his intoxicated driving, and where his criminal conduct is related to his problem with alcohol.

The Individual also argues that his prior criminal conduct was the product of his alcohol consumption, but that his treatment for his alcohol consumption problem has established his rehabilitation from his criminal conduct. Tr. at 9-10, 59-60. As noted above, however, I cannot conclude that the Individual has sufficiently addressed his alcohol consumption problem and that he is unlikely to relapse in the future. Therefore, I cannot determine that the Individual is unlikely to commit alcohol-related crimes in the future. Notably, the Individual admitted to driving while intoxicated hundreds of times over several decades. The Individual's recent abstinence from alcohol is not sufficient to outweigh that lengthy period of misconduct and does not establish that the Individual is unlikely to return to alcohol-related criminal conduct in the future.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has failed to mitigate the security concerns that the LSO has raised under these Guidelines. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense or would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted. Either party may

seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Gregory S. Krauss
Administrative Judge
Office of Hearings and Appeals