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

In the Matter of: Personnel Security Hearing)		
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Filing Date: April 2, 2021)	Case No.:	PSH-21-0036
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_____)		

Issued: June 21, 2021

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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."¹ 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 access authorization. On June 26, 2019, the Individual notified DOE that he had been arrested and charged with Driving Under the Influence (DUI). Exhibit (Ex.) 9 at 1. The local security office (LSO) subsequently received documentation related to the Individual's arrest, including an affidavit of the arresting officer who indicated that she was summoned by witnesses who observed the Individual drive his vehicle into a field while attempting to leave a restaurant. *Id.* at 10.

On August 21, 2019, the LSO issued the Individual a letter of interrogatory (LOI) concerning his alcohol consumption and the events that led to his arrest for DUI. Ex. 10. In his response to the LOI, the Individual indicated that he had previously been arrested for underage consumption of alcohol. *Id.* at 1. The Individual met with a DOE-contracted psychologist (DOE Psychologist) for a clinical interview on October 17, 2019. Ex. 11 at 3. On October 29, 2019, the DOE Psychologist issued a Psychological Assessment (Report) in which she opined that the Individual met the

¹ 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.

diagnostic criteria for Alcohol Use Disorder (AUD), Mild, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 6.

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. 1 at 1. In a summary of security concerns attached to the letter (SSC), the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 sixteen exhibits (Ex. 1–16) into the record.² The Individual submitted twenty-one exhibits (Ex. A–U). The Individual presented the testimony of three witnesses, including his own, and the LSO presented the testimony of the DOE Psychologist.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for its determination that the Individual was ineligible for a security clearance. Ex. 1 at 1. 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. Adjudicative Guidelines at ¶ 21. The SSC listed as relevant facts: the DOE Psychologist determined that the Individual met the diagnostic criteria for AUD, Mild, under the *DSM-5*; the Individual was arrested and charged with DUI in 2019; and the Individual was charged with Consumption of Alcohol by a Minor in 2007. Ex. 1 at 1. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work and was diagnosed with AUD, Mild, by a duly qualified medical or mental health professional justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

III. REGULATORY STANDARDS

² The Individual moved for the hearing to be adjourned and for the matter to be remanded to the LSO to conduct a new review of the Individual's eligibility for a security clearance after DOE introduced Exhibit 16, an addendum to the Report related to the results of a compromised Phosphatidylethanol (PEth) blood test, during the hearing. Transcript at 36–38, 58–64. The Individual argued that the introduction of Exhibit 16 at the hearing infringed upon his due process rights because he was not provided adequate notice of the evidence relied upon by DOE in denying him a security clearance or the opportunity for his consulting psychologist to opine on the derogatory evidence. *Id.* at 58–59, 62–64. I denied the Individual's motion to adjourn the hearing on the grounds that the information contained in Exhibit 16 was not relied upon by the LSO in the SSC as a basis for denying the Individual a security clearance, the DOE Psychologist did not receive the test results described in Exhibit 16 until after she furnished her Report to the LSO, and the test results described in Exhibit 16 (154 ng/mL) were more favorable to the Individual than the results of a second PEth test (226 ng/mL) upon which the DOE Psychologist relied in preparing her Report. *Id.* at 66–67. As the information in Exhibit 16 was not relied upon by the DOE Psychologist or the LSO and was more favorable to the Individual than the test results upon which the DOE Psychologist had relied, I concluded that the Individual was not prejudiced by the admission of the evidence and that adjournment of the hearing was unwarranted. *Id.*

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 was arrested for DUI in the early morning hours of June 26, 2019. Ex. 9 at 10. Witnesses observed the Individual drive his car into a field while attempting to leave a restaurant where he had been consuming alcohol with friends. *Id.* The arresting law enforcement officer indicated that the Individual told her that he had consumed "five or six drinks" prior to driving. *Id.* The law enforcement officer arrested the Individual after he failed a field sobriety test. *Id.*

The LSO issued the Individual the LOI on August 21, 2019. Ex. 10. The Individual indicated in his response to the LOI that he had consumed dinner and drinks with friends from approximately 8:00 PM to Midnight on the night of his arrest for DUI. *Id.* at 8. The Individual represented that he "felt fine, not intoxicated" on the night of his arrest. *Id.* The Individual also disclosed that he was arrested and charged with underage consumption of alcohol in 2007, and that the charge was expunged from his criminal record after he completed community service. *Id.* at 1.

The Individual indicated in his response to the LOI that he usually consumed one to two alcoholic drinks weekly and infrequently consumed anywhere from three to nine alcoholic drinks on special occasions. *Id.* at 3. The Individual reported that he did not habitually consume alcohol to intoxication and that the last time he consumed alcohol to intoxication was "many years ago." *Id.* at 3-4. The Individual asserted that "this process [the review of his eligibility for a security clearance] is premature[] and caused multiple negative effects on [his] work environment without cause yet" because the results of a blood alcohol test by the law enforcement agency responsible for his DUI arrest had not yet been reported. *Id.* at 5.

The Individual met with a Licensed Clinical Social Worker (LCSW) four times in August 2019 for “individual psychotherapy.” Ex. E at 2–3. Based on the data self-reported by the Individual, the LCSW determined that the Individual did not meet the diagnostic criteria for a substance abuse disorder and that no further treatment was warranted. *Id.*

The Individual met with the DOE Psychologist for a clinical interview on October 17, 2019. Ex. 11 at 3. The Individual reported to the DOE Psychologist that he usually consumed one to two alcoholic drinks per week but consumed up to six alcoholic drinks in a sitting on special occasions. *Id.* The Individual represented that he could not recall the last occasion on which he was intoxicated. *Id.* He also expressed the intention to continue consuming alcohol at his current level, except that he would limit himself to doing so at home to avoid any further alcohol-related charges. *Id.* at 5.

The Individual told the DOE Psychologist that he consumed four or five sixteen-ounce beers and three shots of whiskey between 8:00 PM and Midnight prior to his arrest for DUI. *Id.* at 4. The Individual denied that he felt intoxicated and asserted that he had driven his car into the field while attempting to impress his friends by “spin[ning] the tires” on his muscle car while driving away. *Id.* The Individual reported that the law enforcement agency responsible for his arrest had measured his blood alcohol content (BAC) at .231g/210L. *Id.* Taking into account the Individual’s gender and stature, the DOE Psychologist calculated that the Individual’s BAC likely would have been measured at .16g/210L if his self-reported alcohol consumption on the night of his arrest was accurate. *Id.* Thus, the DOE Psychologist inferred that the Individual consumed significantly more alcohol on the night of his arrest than he had admitted to her and the arresting officer. *Id.*

At the request of the DOE Psychologist, the Individual underwent two laboratory tests, an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test, immediately following the clinical interview. *Id.* The PEth sample was invalidated by laboratory error and the Individual provided a new sample on October 22, 2019. *Id.* The EtG test was negative, which the doctor who interpreted the EtG test characterized as “strong medical evidence that the [Individual] was abstinent from alcohol during the three days prior to the sample collection” on October 17, 2019. *Id.* at 12. However, the PEth test was positive at 226 ng/mL. *Id.* The doctor who interpreted the PEth test opined that the test result was “congruent with heavy alcohol consumption” and noted that one study had found a similar PEth result to be consistent with mean alcohol consumption of 4.3 units daily. *Id.*

In light of the results of the PEth test, the DOE Psychologist inferred that the Individual was “intentionally minimiz[ing] his current alcohol use in order to paint himself in a more favorable light and avoid potential consequences.” *Id.* at 6. The DOE Psychologist further opined that the Individual’s repeated claims that he did not feel intoxicated on the night of his arrest for DUI might have been attributable to alcohol tolerance developed through regular alcohol consumption at higher levels than he admitted. *Id.* The DOE Psychologist determined that the Individual met two of the diagnostic criteria for AUD under the *DSM-5*, which support a diagnosis of AUD, Mild. *Id.* The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for at least twelve months, undergoing “frequent[] random EtG tests and at least two PEth tests” during his period of abstinence from alcohol, and participating in Alcoholics Anonymous (AA) or a comparable program on a weekly basis for twelve months. *Id.*

The Individual provided samples for two EtG tests and seven PEth tests from September 28, 2020, to May 12, 2021. Exs. F–M, S. The Individual provided the laboratory test results and other relevant documents to a consultant in Medical Pharmacology and Toxicology (Individual's Pharmacologist) who interpreted the results. Ex. R. The PEth sample provided by the Individual on October 15, 2020, tested positive for traces of the PEth biomarker at 750 ng/mL. Ex. G.³ All of the other tests were negative for traces of alcohol at a detection level of 500 ng/mL. Exs. F, H–M, S; *see also* Ex. R at 3 (reflecting the explanation of the Individual's test results offered by the Individual's Pharmacologist). The Individual tested negative for traces of alcohol on twelve workplace breath alcohol tests conducted from May 31, 2018, to September 21, 2020. Ex. O at 1–12. The Individual attended online AA meetings on an approximately weekly basis from October 17, 2020, to April 19, 2021, with an approximately one-month interruption gap between January 27, 2021, and February 25, 2021. Exs. N, T.⁴

V. HEARING TESTIMONY

A co-worker of the Individual (First Co-Worker) who has known him since 2016 testified that he and the Individual worked on the same shift daily until 2019, during which time he observed that the Individual always came to work on time and never demonstrated signs of intoxication or a hangover. Tr. at 8–9. The First Co-Worker testified that he began working a different shift from the Individual after being promoted to a supervisory role, but that he still sees the Individual at work on an approximately weekly basis. *Id.* at 11–12, 34. The First Co-Worker testified that he developed a friendship with the Individual outside of work and has socialized with the Individual on several occasions since his 2019 arrest for DUI. *Id.* at 16. The First Co-Worker reported that the Individual told him that he no longer consumed alcohol and said that he believed that the Individual was sincere in his commitment to abstain from alcohol. *Id.* at 18–19. The First Co-Worker indicated that the Individual told him that he had attended AA meetings and was actively participating with the goal of self-improvement. *Id.* at 27. The First Co-Worker testified that he had not observed the Individual consume alcohol since his arrest for DUI and had seen the Individual refrain from consuming alcohol in social settings where alcohol was served. *Id.* at 29–30, 32, 35.

Another co-worker of the Individual (Second Co-Worker) who has known the Individual since 2016 testified as to the Individual's excellent character and leadership skills and opined that the Individual was respected by his colleagues. *Id.* at 41, 44–45. The Second Co-Worker testified that the Individual spoke with him about his DUI arrest shortly after it occurred, and that the Individual was deeply remorseful. *Id.* at 47–48. The Second Co-Worker believed that the Individual had abstained from alcohol since the birth of his daughter and that he had attended AA meetings and a Mothers Against Drunk Driving meeting. *Id.* at 48–51. The Second Co-Worker indicated that the Individual had not discussed with him his AA participation or lessons he had learned. *Id.* at 53–54.

³ The PEth tests obtained by the Individual reported the results in micrograms per milliliter ($\mu\text{g}/\text{mL}$). One microgram is equal to 1000 nanograms.

⁴ The website that provides the AA meetings digitally records the time that each participant enters and exits the virtual meeting room and makes this information available on attendance sheets which the Individual submitted into evidence.

The Individual testified that he now understands that his past drinking might have constituted binge drinking and that he intends to refrain from consuming alcohol for the foreseeable future because he is focused on his family. *Id.* at 71. The Individual testified that he had gained significant insight from participating in online AA meetings where he interacted with individuals who helped him to realize that a person need not experience severe cravings or withdrawal symptoms to be an alcoholic. *Id.* at 72–73. The Individual indicated that he had attended online AA meetings because of limitations on his availability due to his partner’s pregnancy and concerns about COVID-19 exposure. *Id.* at 74.

The Individual testified that a counselor at the DOE facility at which he worked recommended that he attend AA meetings and four sessions with a counselor. *Id.* at 78. The Individual reported that he completed these actions. *Id.* at 79; *see also* Ex. E at 2–3 (confirming that the Individual attended four counseling sessions and did not self-report information that would support a substance abuse diagnosis). The Individual also completed several substance abuse screenings and was recommended to attend alcohol education courses as part of the adjudication of his DUI but was not recommended to pursue treatment. Tr. at 79–83; Ex. D. The Individual also had an interlock system placed on his vehicle in January 2020 which was removed on July 28, 2020. Tr. at 83–84; Ex. B. The Individual successfully completed probation and the charges related to his DUI were dismissed. Tr. at 85; Ex. A.

The Individual did not dispute the information in the SSC related to his alcohol offenses and acknowledged that he was intoxicated on the night of his arrest for DUI despite reporting that he had not felt intoxicated. Tr. at 86–94. He attributed the discrepancy to consuming the alcohol very quickly and not yet feeling its effects when he was arrested. *Id.* The Individual acknowledged that he may have demonstrated some minimization with respect to his impairment on the night of his arrest for DUI. *Id.* at 93–94.

The Individual indicated that he last consumed alcohol on September 20, 2020. *Id.* at 95. The Individual testified that his positive PEth test in October 2020 was attributable to alcohol he consumed on or before September 20, 2020, and that he engaged in occasional binge episodes up to that date in which he consumed six to eight drinks per sitting. *Id.* at 98–99, 139–40. The Individual indicated that he minimized his binge drinking by telling himself that his average level of consumption was two drinks weekly and therefore that he was not drinking to excess. *Id.* at 158. The Individual indicated that he attempted to comply with the DOE Psychologist’s recommendations and that he planned to remain sober going forward because he does not “really have a want or need to drink” and he believes that he will be a more responsible father to his daughter if he abstains from alcohol. *Id.* at 101–02. The Individual characterized his decision to abstain from alcohol as an act of proving to himself that he did not have a problem. *Id.* at 153–54.

The Individual testified that he had told his partner that he would “go as long as [he] possibly can” with abstinence but would not absolutely promise never to drink alcohol again which he characterized as setting himself up for failure. *Id.* at 155–56. The Individual indicated that he might drink socially to connect with others in the future but not for the purpose of consuming alcohol in of itself. *Id.* at 156–57.

The Individual testified that he attended online AA meetings at least weekly, except for February 2021, when he was caring for his newborn daughter, and that he intended to continue attending online AA meetings going forward. *Id.* at 103–04. The Individual testified that he chose to attend online AA meetings at the recommendation of another attendee at live AA meetings and that the platform he chose to use allowed him to attend meetings at a time of his choosing. *Id.* at 106–07. The Individual indicated that the online platform logged the time that he entered and exited online meetings and reflected this data on his attendance sheets. *Id.* at 107–08. The Individual testified that he had always attended meetings on time and did not leave meetings early. *Id.* at 112. When asked about attendance sheets included in the Individual’s exhibits with sign-in and sign-out times within the same minute, sign-in and sign-out times many hours apart, and sign-in times that did not correspond to the starting time of the meetings, the Individual denied knowledge of the reasons for the time stamps but speculated that he might have accidentally signed out of meetings while multi-tasking between listening to the meetings and caring for his daughter. *Id.* at 108–13. The Individual indicated that he primarily observed AA meetings and usually did not actively participate except in one-on-one meetings with another attendee with whom he had developed a personal connection based on their shared experiences. *Id.* at 133. The Individual indicated that he did not have a sponsor and liked to “pick and choose” what he worked on and did not work the steps in order or one at a time. *Id.* at 134.

The Individual acknowledged that minimizing the extent of his alcohol consumption contributed to his prior claims that he did not feel intoxicated when he was arrested for DUI and that he had failed the field sobriety test due to a long-standing knee injury and uneven ground. *Id.* at 122–23. The Individual also acknowledged that he was “defensive” at the time he responded to the LOI because of rumors spread at his work regarding the circumstances of his arrest. *Id.* at 124–26. The Individual indicated that he was surprised at the results of the blood alcohol test because he did not believe that he was so intoxicated. *Id.* at 126. The Individual indicated that he remained on “the defensive” when he met with the DOE Psychologist. *Id.* at 138–39. The Individual indicated that his attitude changed when he learned he was going to become a father and that his child would rely on him. *Id.* at 139.

The Individual indicated that his partner does not consume alcohol and that they do not keep alcohol in their home. *Id.* at 131–32. The Individual reported that he had attended social gatherings where alcohol was served and had not struggled to refuse alcohol. *Id.* at 132. The Individual acknowledged that he had engaged in binge drinking in the past, that this behavior was problematic for him, and that he “can identify as an alcoholic in that aspect.” *Id.* at 133–34. The Individual indicated that he could reach out to his brother if he had an immediate need for support in his sobriety. *Id.* at 136.

The DOE Psychologist testified that her assessment of the Individual’s trustworthiness and reliability were impacted by the PEth test results showing that he consumed more alcohol than he admitted in the clinical interview. *Id.* at 166. After observing all of the other hearing testimony, the DOE Psychologist testified that her opinion that the Individual met sufficient *DSM-5* diagnostic criteria to support a diagnosis of AUD, Mild, was unchanged and that if the Individual had abstained from alcohol for eight months as he claimed that he would be in early remission but fall short of the twelve months required to demonstrate full remission. *Id.* at 170–71. The DOE Psychologist expressed that the Individual’s behavior changes demonstrated reformation, but that

his rehabilitation was still in progress. *Id.* at 172. The DOE Psychologist opined that the Individual’s understanding of his alcohol problem was superficial, that his testimony that he wanted to see how long he could go without drinking was not as developed as it might be, and that he did not demonstrate sufficient understanding of his ability to control his drinking once he starts. *Id.* at 172–73. The DOE Psychologist opined that the Individual’s prognosis was “good, but . . . could be better if he had a better understanding of . . . what his actual problem with alcohol entails and how it got established and how it has impacted his life.” *Id.* at 173. The DOE Psychologist indicated that the PEth tests obtained by the Individual influenced her opinion inasmuch as they evidenced a desire to control his drinking. *Id.*

However, taking into consideration all of the information available, including that the Individual met with multiple mental health professionals who did not detect the Individual’s alcohol problem which was only revealed through laboratory testing, the DOE Psychologist opined that the Individual’s claimed eight months of abstinence was insufficient to establish a firm change in the Individual’s behavior. *Id.* at 174–75. The DOE Psychologist also expressed concern that temporary environmental deterrents from consuming alcohol, such as restrictions related to the COVID-19 pandemic and need to help care for his newborn child, might have played a significant role in the Individual’s abstinence from alcohol. *Id.* at 175. The DOE Psychologist opined that she would like to see if the Individual could continue to abstain from alcohol over time after being confronted with more challenges to his sobriety. *Id.* The DOE Psychologist also expressed concern that the Individual delayed in pursuing AA meetings until October 2020 and that she felt that attending in-person meetings demonstrated greater commitment to sobriety. *Id.* at 177.

VI. ANALYSIS

The Individual did not dispute the allegations in the SSC. *Id.* at 86–94. Instead, the Individual sought to demonstrate that he had mitigated the security concerns under Guideline G. 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.

Adjudicative Guidelines at ¶ 23(a)–(d).

The Individual admitted to previous episodes of binge consumption of alcohol and one of his episodes of binge drinking was captured on an October 2020 PEth test. Tr. at 98–99, 139–40; Ex. G. While the Individual’s arrest for DUI was one of only two alcohol-related criminal infractions in his life, I have no basis to conclude that the binge consumption of alcohol that led to the Individual exercising poor judgment was an infrequent or unusual event. Rather, in light of the DOE Psychologist’s opinion that the Individual developed a tolerance to alcohol, it is likely that the Individual engaged in binge drinking behavior over an extended period of time. Ex. 11 at 6. As the Individual engaged in a documented episode of binge drinking within approximately eight months of the hearing, and likely engaged in similar behavior on a recurring basis over the preceding years, I find that the first mitigating condition under Guideline G is inapplicable in this case. Adjudicative Guidelines at ¶ 23(a).

The DOE Psychologist recommended that the Individual demonstrate twelve months of abstinence of alcohol through “frequent, random EtG tests and at least two PEth tests” and attend AA or a comparable program weekly for twelve months. Ex. 11 at 7. The DOE Psychologist reiterated this recommendation at the hearing, and expressed that, even with the Individual’s claimed eight months of abstinence from alcohol, additional time was warranted to solidify the Individual’s recovery in light of his superficial understanding of his AUD and potential reliance on external controls to maintain his sobriety at this point in his recovery. *Supra* p. 7–8. The Individual has acknowledged that he previously engaged in binge consumption of alcohol and underreported his consumption of alcohol and feelings of intoxication to minimize his alcohol-related problems. *Supra* p. 7.

In addition to acknowledging his maladaptive alcohol use, the Individual has manifested the intention to abstain from alcohol, undergone alcohol testing, and participated in AA meetings. However, the records of the Individual’s online AA participation reflect numerous occasions on which the Individual joined meetings at different times than the time for which they were scheduled, left the meeting significantly earlier than its scheduled end time, or left the meeting an unusually long period of time after the meeting ended. Ex. N at 1, 2, 5, 15; Ex. T at 1–6.⁵ Additionally, the Individual testified that he mostly passively observed the online AA meetings, had not taken an AA sponsor, and sometimes listened to meetings while caring for his daughter. *Supra* p. 7. In light of the irregularities in some of the Individual’s attendance sheets and his own testimony that he was not an active participant in the meetings, I assign low weight to the Individual’s AA attendance as evidence of action taken to overcome his problematic alcohol consumption.

With respect to the Individual’s claimed abstinence from alcohol, the Individual’s own laboratory testing shows that he engaged in heavy alcohol consumption approximately eight months prior to the hearing. Ex. G; Tr. at 98–99, 139–40 (reflecting the Individual’s opinion that he partook in the binge consumption of alcohol in September 2020). Moreover, the Individual’s Pharmacologist did

⁵ By way of example, the first AA meeting for which the Individual provided an online attendance sheet was a one-hour meeting beginning at 6:00 PM. Ex. N at 1. The Individual’s attendance sheet shows that he connected to the meeting at 4:12 PM and exited the meeting at 6:01 PM. *Id.* The facts that the online platform recorded the Individual as signing into the meeting nearly two hours before it was scheduled to begin, staying in the meeting room for longer than the scheduled meeting time, and leaving just as the meeting was scheduled to begin suggests that the Individual did not attend the meeting.

not opine as to the level of alcohol consumption required to produce a positive PEth result on the PEth tests obtained by the Individual, the 500 ng/mL detection levels of which were greater than the 226 ng/mL PEth result the DOE Psychologist relied upon in providing her opinion. *Compare* Ex. R at 3–6 with Ex. 11 at 5–6. In the absence of expert opinions on the level of alcohol consumption required to produce a positive PEth test result at a 500 ng/mL detection level, I find that the five negative PEth tests produced by the Individual provide only moderate support for his claims to have modified his problematic alcohol consumption habits.⁶ Moreover, the Individual's EtG testing was sporadic and not random as the DOE Psychologist recommended. Furthermore, even if the Individual had provided an expert opinion to the effect that his negative PEth tests were strong evidence that he had abstained from alcohol, the test results would have fallen short of the twelve months of demonstrated abstinence from alcohol recommended by the DOE Psychologist.

While the Individual has acknowledged his maladaptive alcohol use, I find that the Individual has provided insufficient evidence of action to overcome the problem and has not satisfactorily established twelve months of abstinence in accordance with treatment recommendations. Therefore, the second mitigating condition under Guideline G is inapplicable. Adjudicative Guidelines at ¶ 23(b).

The third and fourth mitigating conditions under Guideline G are inapplicable because the Individual has not pursued alcohol-related treatment. Moreover, as described above, the Individual did not participate in AA for twelve months as recommended by the DOE Psychologist and the substantiveness of his participation in the meetings he did attend is called into question by his testimony as to passively observing and caring for his child during meetings and the irregularities in his attendance sheets. For these reasons, I find that the third and fourth mitigating conditions under Guideline G are not applicable in this case. *Id.* at ¶ 23(c)–(d).

The DOE Psychologist testified that the Individual is too early into the recovery process for her to find him in sustained remission from his AUD or to provide an unqualified, positive prognosis for his recovery. Moreover, the Individual engaged in binge drinking as recently as eight months prior to the hearing, did not fully comply with the DOE Psychologist's recommendations, provided negative PEth tests without adequate information as to their significance in light of the elevated detection levels, and provided testimony and attendance sheets which were not fully consistent with substantive participation in AA. For these reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G 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

⁶ In reaching this conclusion, I assigned no weight to Exhibit 15, an e-mail message from a psychologist who operates the contracting company through which the DOE Psychologist was retained to evaluate the Individual concerning the Individual's PEth test results. The opinion offered in Exhibit 15 is not an expert opinion and relies on hearsay evidence purportedly obtained from a medical doctor. For these reasons, I disregarded Exhibit 15 in considering the evidentiary weight to assign to the Individual's PEth tests.

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