



On August 4, 2021, the LSO received notice that the Individual had entered an alcohol treatment program. *See* Ex. 5 (summarizing information related to the LSO’s consideration of the Individual’s eligibility for a security clearance). The LSO issued the Individual a letter of interrogatory (LOI) concerning his use of alcohol. Ex. 6. In his response to the LOI, the Individual indicated that he had voluntarily entered treatment following a binge drinking episode. *Id.* at 4.

A DOE-contracted psychologist (DOE Psychologist) conducted a clinical interview of the Individual on December 10, 2021. Ex. 7 at 2. The Individual disclosed to the DOE Psychologist that the event that led him to seek treatment “was the worst binge of [his] life” during which he “drank and passed out from Saturday [un]til Thursday.” *Id.* at 4. On December 22, 2021, the DOE Psychologist issued a Psychological Assessment (Report) in which she determined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Severe, in Early Remission, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 10–11.

The LSO issued the Individual a letter in which it notified him that it was suspending his security clearance because it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

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 thirteen exhibits (Ex. 1–13). The Individual submitted ten exhibits (Ex. A–J). The Individual testified on his own behalf, and offered the testimony of three character witnesses and a counselor (Individual’s Counselor). Hearing Transcript (Tr.) at 3, 9, 17, 25, 30, 38. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 73.

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

The LSO cited Guideline G (Alcohol Consumption) as the basis for its determination that the Individual was ineligible for access authorization. Ex. 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 cited the DOE Psychologist’s determination that the Individual met the diagnostic criteria for AUD, Severe, in Early Remission, under the *DSM-5*, the Individual’s admission to having engaged in binge drinking, and the charges filed against the Individual in 2001 for participating in a fight after consuming alcohol. Ex. 1. The LSO’s assertions that the Individual had alcohol-related incidents away from work, habitually or binge consumed alcohol to the point of impaired judgment, and was diagnosed with AUD by the DOE Psychologist justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

## **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 Dep't 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**

In 2001, the Individual was charged with obstructing an officer, unlawfully assisting minors to obtain alcohol, and public affray for his role in a fight at a bowling alley. Ex. 13 at 69. The Individual consumed at least six beers and two shots of hard alcohol prior to engaging in the fight. Ex. 12 at 16–20. The Individual was employed as a law enforcement officer at the time of his arrest and was placed on two weeks unpaid leave for his conduct. *Id.* at 23–30.

In April 2012, the Individual went on a four-day binge drinking episode after the death of a relative. *Id.* at 32–36. The Individual went to a friend's house to drink because his wife "was pretty upset." *Id.* at 37. During this binge drinking episode, the Individual would consume alcohol to intoxication, "sleep, wake up, [] feel hungover, . . . [and] start the cycle again." *Id.* According to the Individual, he engaged in this binge drinking episode "to escape the fact that [his relative] had passed and that [he] and [his] wife had not been getting along prior to [his relative] passing." *Id.* at 38.

The Individual's April 2012 binge drinking episode ended when his mother and his wife came to the friend's home where he was staying to convince him to stop. *Id.* at 40. The law enforcement agency that employed the Individual referred him to the 2012 IOP. *Id.* at 42–43. In the ten-week 2012 IOP, the Individual participated in twelve hours of weekly treatment and attended Alcoholics Anonymous (AA) meetings three times weekly. *Id.* at 44, 46, 48. Following completion of the 2012 IOP, he attended aftercare, including AA meetings, for six weeks. *Id.*

In 2014, the Individual relapsed and resumed consuming alcohol. Tr. at 42 (attributing his relapse to a "lack of coping skills, marital problems, different parenting styles that [he and his] wife []

have” and indicating that “the only avenue [he] had [to cope] was drinking in excess”); Ex. 7 at 5. Following his relapse, the Individual binge consumed alcohol on weekends when his family was not at home. Ex. 7 at 5. The Individual attributed this behavior to an absence of structure in his life when he was not working. *Id.*

On the evening of August 1, 2021, the Individual went to a hospital complaining of nausea, tremors, and dizziness, which medical practitioners at the hospital identified as symptoms of alcohol withdrawal. Ex. 11 at 1. The Individual reported to the hospital that his practice over the prior six days had been to “wake[] up and drink[] until he passes out [and] then repeat this [behavior].” *Id.* The Individual also reported having experienced auditory hallucinations after drinking. *Id.*

The Individual reported his hospital admission to the DOE contractor and was referred to a mental health practitioner employed by the DOE contractor. Ex. 9 at 14. The Individual told the mental health practitioner that he had engaged in binge drinking “several times during the past couple years,” which he attributed to enjoying drinking with old friends and “wanting to escape” arguments with his wife, and had taken sick leave or personal days from work on days in which he engaged in binge drinking. *Id.*

On August 10, 2021, the Individual was admitted into the 2021 IOP. Ex. 10 at 7. As part of his participation in the 2021 IOP, the Individual attended group counseling three times weekly, individualized counseling once weekly, and AA meetings once weekly. Tr. at 30–31, 51. The Individual successfully completed the 2021 IOP and was discharged in October 2021. Ex. 10 at 7. In addition to the 2021 IOP and associated aftercare, the Individual completed a substance abuse class at a local college to better understand addiction and recovery. Tr. at 57; Ex. I.

The LSO issued the Individual the LOI in September 2021. Ex. 6. The Individual reported that his alcohol consumption had increased since he began working for the DOE contractor in 2015 and that he “needed [] more alcohol to reach [] intoxication [] and [he] continued to drink for more than 2 days [at a time].” *Id.* at 5. He indicated that he engaged in binge drinking “to escape any type of life stresses or problems and [because he] lacked the coping skills to avoid the over drinking.” *Id.*

On December 10, 2021, the Individual met with the DOE Psychologist for a clinical interview. Ex. 5 at 2. During the clinical interview, the Individual disclosed that, prior to his hospitalization, he consumed alcohol to intoxication on most days on which he was not working. *Id.* at 9. The Individual told the DOE Psychologist that he had abstained from alcohol since his August 2021 hospitalization and intended to continue abstaining from alcohol in the future. *Id.* at 5. At the request of the DOE Psychologist, the Individual provided blood and urine samples for laboratory testing. *Id.* at 8. The results of these tests were negative for chemical evidence of alcohol consumption. *Id.*

The DOE Psychologist issued her Report on December 22, 2021. *Id.* at 10. In the Report, she concluded that the Individual met the diagnostic criteria for AUD, Severe, in Early Remission under the *DSM-5*. *Id.* at 9. She recommended that the Individual demonstrate rehabilitation by abstaining from alcohol for at least twelve months, documenting his abstinence from alcohol with

Phosphatidylethanol (PEth) testing every two months, and participating in AA or aftercare for twelve months. *Id.*

The DOE contractor required the Individual to undergo twice monthly random alcohol screenings for two years, beginning in September 2021. Exs. B, J. Each of the screenings completed as of May 2022 was negative for traces of alcohol. Ex. J. The Individual also provided urine samples to the IOP provider for testing on a monthly basis from November 2021 through April 2022 while participating in aftercare. Ex. D. Each of these samples tested negative for evidence of alcohol consumption. *Id.* The Individual additionally provided samples for PEth tests in April and May of 2022, both of which were negative for traces of alcohol consumption. Exs. E–H.

At the hearing, the Individual’s supervisor and two other persons in his management chain testified that he has demonstrated trustworthiness and reliability in the workplace. Tr. at 9, 11–12, 17, 20–21, 25–27. The Individual’s Counselor testified that the Individual successfully completed the 2021 IOP in October 2021 and had voluntarily remained in aftercare up to the date of the hearing. *Id.* at 31, 35. She testified that the Individual had “done a tremendous job” in the 2021 IOP and always positively contributed to group treatment sessions. *Id.* at 31, 35–36. She indicated that her ongoing individualized counseling sessions with the Individual focused on identifying triggers for alcohol consumption, how to avoid relapses, and strategies for addressing relapses if they occur. *Id.* at 32–33.

The Individual testified that he had abstained from alcohol since his August 2021 relapse and intended to continue to do so in the future. *Id.* at 68. He indicated that, through treatment, he had learned to identify “people, place[s], and things” that triggered him to drink and how to manage those triggers without relapsing. *Id.* at 50, 60, 71. The Individual testified that he has stopped communicating with friends with whom he drank with in the past and no longer attends sporting events or other places where he would be tempted to consume alcohol. *Id.* at 62–63. He also reported that he manages stress and introduces structure into his life outside of work by exercising at a gym. *Id.* at 61.

The DOE Psychologist testified that she believed that the Individual had “rigorously followed” her recommendations and demonstrated rehabilitation. *Id.* at 76. She testified that the Individual’s changed social activities to avoid triggers for alcohol and emphasis on self-care were positive for his recovery. *Id.* She opined that the Individual’s prognosis for avoiding a return to problematic alcohol consumption was “good.” *Id.* She explained that her prognosis was positive, despite the Individual’s prior relapse after treatment, because of the Individual’s proactive approach to obtaining assistance and motivation to achieve and sustain recovery. *Id.* at 77–78.

## **V. ANALYSIS**

### **A. Guideline G**

The LSO’s allegations that the Individual binge consumed alcohol to the point of impaired judgment and was charged for participating in a fight after consuming alcohol, as well as the DOE Psychologist’s diagnosis of the Individual with AUD, justify the LSO’s invocation of Guideline

G. Adjudicative Guidelines at ¶ 22(a), (c)–(d). Conditions that may mitigate security concerns under Guideline G include:

- (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; and,
- (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's alcohol-related charges are mitigated by the passage of over twenty years since the Individual committed the offenses. Additionally, the LSO has not alleged that the Individual committed any alcohol-related offenses since 2001. Accordingly, I find that the security concerns raised by the Individual's alcohol-related offenses are mitigated by the first mitigating condition under Guideline G. *Id.* at ¶ 23(a).

The Individual has repeatedly acknowledged his maladaptive alcohol use and taken action to overcome this problem through his participation in the 2021 IOP and aftercare. The Individual successfully completed the 2021 IOP, and the Individual's Counselor described the Individual as an active and positive participant in group counseling. The Individual also testified at the hearing that he had abstained from alcohol since August 2021 and provided documentation of alcohol testing supporting his claimed abstinence. The DOE Psychologist testified that the Individual had complied with her treatment recommendations and had a positive prognosis regarding his chance of relapse into problematic alcohol consumption in the future. For these reasons, I find that the Individual has established the applicability of the second and fourth mitigating conditions under Guideline G. *Id.* at ¶ 23(b), (d).

In light of the Individual's successful completion of the 2021 IOP, the Individual's Counselor's positive account of the Individual's participation in the 2021 IOP, the results of the alcohol testing obtained by the Individual, and the positive prognosis given by the DOE Psychologist, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise 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 hearing, I find that the Individual has 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 be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals