



Individual's PEth test result was positive, indicating that the Individual had engaged in moderate to heavy alcohol consumption during the previous three to four weeks. Ex. 10 at 4.

The Psychologist issued a report of his findings (the Report) on December 12, 2021. Ex. 10 at 5. In the Report, the Psychologist found that the Individual had met the criteria for Alcohol Use Disorder (AUD) set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) and that the Individual was neither reformed nor rehabilitated. Ex. 10 at 4-5. The Psychologist recommended that the Individual completely abstain from alcohol use, participate in an outpatient substance abuse treatment program on a weekly basis for 16 weeks, attend aftercare for the remainder of one year after completing the substance abuse treatment program, and participate in a support group such as Alcoholics Anonymous (AA) for one year. Ex. 10 at 5.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his father, his brother, his Counselor (the Counselor), his AA sponsor (the Sponsor), his former supervisor, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0076 (hereinafter cited as "Tr."). The Individual submitted five exhibits marked as Exhibits A through E. The DOE Counsel submitted 12 exhibits marked as Exhibits 1 through 12.

Exhibit A consists of a series of documents indicating that the Individual attended at least 47 AA meetings from March 5, 2022, through May 31, 2022. Exhibit B is a laboratory report indicating that a urine sample submitted by the Individual for drug screening (not including alcohol) on March 29, 2022, was negative. Exhibit C is a printout of text messages showing the Individual's interest in attending AA meetings and notes taken by the Individual during AA study sessions. Exhibit D is a one-page note, dated June 14, 2022, from the Individual's outpatient substance abuse treatment program (OSAP) indicating that he has been attending that program since April 13, 2022. Exhibit D notes that the Individual "has been engaged with treatment by attending groups weekly and seeing his counselor and case manager."

Exhibit E consists of the Individual's treatment records from the OSAP. These records indicate that the Individual began treatment on April 26, 2022. Ex. E at 11. The OSAP records indicates that the Individual believed that his social anxiety was a trigger for his alcohol abuse. Ex. E at 5. Exhibit E indicates that the treatment program recommended for the Individual included three hours a week of group therapy. Ex. E at 5. An entry in these records, dated April 26, 2022, states:

He last drank alcohol three weeks ago, one drink then. Before then, the last he drank was January 2022. Before that time, he was drinking up to once per week, usually 3 drinks each time.

Ex. E at 16, 25. The OSAP records indicate that the Counselor diagnosed him with Alcohol Use Disorder, Mild, and Adjustment Disorders, With Mixed Anxiety and Depressed Mood. Ex. E at 24. The Counselor further concluded that: “He is well motivated to maintain sobriety, and has good supports in place to succeed.” Ex. E at 25. The Counselor further opined in his treatment notes that the Individual “is thoughtful and intelligent with motivation to get his legal issues settled. [He] should be able to complete treatment with relative ease as long as he is able to make it to groups and sessions.” Ex. E at 27. The Individual’s treatment records also indicated that the Individual was making ongoing progress in his treatment. Ex. E at 33.

## **II. The Notification Letter and the Associated Security Concerns**

The Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, citing his history of two alcohol-related arrests and the Psychologist’s finding that the Individual met the DSM-5 criteria for AUD. This information adequately justifies the LSO’s invocation of Guideline G. Under Guideline G, “[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.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder,” and “diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder.” Adjudicative Guidelines at ¶ 22(a) and (d).

The LSO also invoked Guideline J (Criminal Conduct) in the Notification Letter, citing the Individual’s two alcohol-related arrests in support thereof. This information adequately justifies the LSO’s invocation of Guideline J. Guideline J provides that “[c]riminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guideline J at ¶ 30.

## **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) (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 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. Hearing**

At the hearing, the Individual presented the testimony of six witnesses, including himself, in an attempt to show that he was reformed and rehabilitated so as to mitigate the security concerns raised by his two alcohol-related arrests and his AUD.

The Individual testified that he “had a tendency to binge drink.” Tr. at 17. The Individual testified that he cannot consume alcohol safely, stating, “I don’t know when to stop.” Tr. at 78. He testified that, after the second DUI, he came to understand that he would become “very impulsive” when using alcohol, which led to his binge drinking. Tr. at 17. At that point, he testified, “I knew I had a problem.” Tr. at 17. The Individual testified that his sobriety date is January 16, 2022. Tr. at 18. The Individual testified that he had been attending AA meetings since March, has an AA sponsor, and had been receiving outpatient counseling.<sup>2</sup> Tr. at 18, 34. He attends weekly AA meetings outpatient treatment, individual counseling, and meets with his sponsor.<sup>3</sup> The Individual is currently working on Step Four of AA’s Twelve-Step Program. Tr. at 35-36, 52. He repeatedly testified that he intends to continue with AA for the rest of his life. Tr. at 52, 71, 74. The OSAP included 3 hours a week of group therapy and course work. Tr. at 54. He recently concluded the OSAP. Tr. at 54. The Individual testified that he does not want to use alcohol, has not been using alcohol, and intends to permanently abstain from using alcohol. Tr. at 42, 79.

The Individual testified that “getting sober has really put me back on track about knowing what I want to do with my future and giving me some newfound insight about, you know, just life and what I want to do.” Tr. at 20. He is very close to his family, and they are all aware that he is in AA. Tr. at 23-27. The Individual testified that he would use alcohol to cope with his social anxiety. Tr. at 29. He now realized that the partying lifestyle was superficial and is now trying to concentrate on more meaningful interpersonal relationships. Tr. at 29-30. He was concerned that his sobriety would adversely affect his social life, but it has not, and in fact it has improved. Tr. at 42. The Individual testified that he has learned coping tools through his treatment and AA, for example: calling his sponsor, staying present in the moment, and changing his perspective. Tr. at 39. He does not keep alcohol in his home. Tr. at 40.

On cross examination, the DOE Counsel asked the Individual about a notation in his treatment records indicating that, on April 26, 2022, he had reported that his last use of alcohol occurred three weeks earlier. Tr. at 44. The Individual responded by stating:

The honest answer is I was trying to find an outpatient place for a long time.  
Nobody would admit me at that point in time because I said my January – my actual

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<sup>2</sup> The Individual testified that several of his family members are involved in the AA program. Tr. at 23.

<sup>3</sup> The Individual testified that he recently concluded his individual counseling. Tr. at 80.

date of my last drink was January 16th. I told a couple places that that was the last date. Nobody would admit me. My insurance wouldn't take it. Nothing like that. So I knew -- but I knew I still needed to find help. And so the place that I went to, [the OSAP], essentially was like "Okay, look, we'll just say --we'll put this down." So that -- that's what the case was there.

Tr. at 47-48. The Individual then testified that he last used alcohol on January 16, 2022. Tr. at 48. The Individual also claimed that he was not dishonest about his last use of alcohol with the OSAP staff. Tr. at 48. He then specifically testified that he did not tell the OSAP staff that he had used alcohol three weeks earlier and reiterated that his last use of alcohol occurred on January 16, 2022. Tr. at 48-50.

During the Individual's testimony, the following exchange occurred between the Individual and his counsel:

- Q. Well, a lot of those -- a lot of people that you meet, you know, their drinking was triggered by -- by trauma sometimes --
- A. Um-hum.
- Q. -- very significant trauma, correct?
- A. Yes.
- Q. Now, you've been fortunate, haven't you?
- A. Yeah. I have.
- Q. You've had a relatively trauma-free existence so far in your life, correct?
- A. Um-hum.
- Q. Have you had an opportunity either with your sponsor or through the group, you know, to explore how to -- how to deal with triggering events?
- A. Yes. So I haven't -- I haven't had much trauma in my life, I would say, but I definitely have had some insecurities that I felt like led me to drinking.

Tr. at 38-39. Subsequently, after asking several other questions, the Individual's counsel asked the Individual: "Have you recognized any change in your relationship with your father since you've stopped drinking?" The Individual responded by stating, in pertinent part: "I didn't have traumas, but I definitely had some issues growing up with different family members and things like that." Tr. at 41. On cross examination, the DOE Counsel cited the Individual's treatment records indicating that the Individual had informed the OSAP staff that he had suffered "Verbal, Emotional Abuse, Sexual Abuse, Molestation and Physical Abuse and Neglect," and then asked why the Individual had testified earlier that he had not had any significant trauma in his life. Tr. at 50-51. In response, the Individual testified that the OSAP's records were accurate and that he had supplied that information to the OSAP and tried to explain the contradiction between this information and his earlier testimony by testifying: "So the reason I said no to that statement was because it was correlated to alcohol, and I was correlating my problems directly with the alcohol, and that's the reason why I said what I said." Tr. at 51-52.

The Individual's former supervisor testified at the hearing that the Individual was an excellent employee. Tr. at 88.

The Sponsor testified at the hearing. He has been an AA sponsor for “about 30 years.” Tr. at 93. He testified that he has been the Individual’s sponsor for “a few months.” Tr. at 91. The Sponsor testified that the Individual is attending AA meetings, reading the AA Big Book, and working on AA’s Twelve-Step program. Tr. at 101. He sees the Individual at AA meetings two or three times a week. Tr. at 103. The Individual is starting the Fourth Step of AA’s Twelve-Step program. Tr. at 95, 108. He testified that the Individual has completed his assignments and that the Individual is engaged in group meetings, where he is honest and open. Tr. at 94-96. He opined that he believes that the Individual “is truly wanting to change,” noting that the Individual was very honest in taking his personal inventory. Tr. at 97. He further opined that the Individual is not just abstaining from alcohol use, he is trying to understand why he was drinking in the first place. Tr. at 99.

The Individual’s brother testified at the hearing that he and the Individual are “best friends.” Tr. at 113. He testified that the Individual “definitely” had a problem with alcohol. Tr. at 115. He further testified that the Individual has decided to stop using alcohol and to become involved in AA, Tr. at 116-117, that he attends two to three AA meetings a week, Tr. at 117, and that he does not keep alcohol in his home. Tr. at 113.

The Counselor testified at the hearing. He is a state-credentialed substance abuse counselor employed by the OSAP and has been treating clients since October 2021. Tr. at 125. The Counselor testified that the Individual complied with all of the OSAP’s requirements. Tr. at 128. The root of the Individual’s substance abuse was his social anxiety and his desire to be more outgoing. Tr. at 129. The Individual’s family and friends provide him with a support system as does AA. Tr. at 131. The Counselor acknowledged that the Individual has had some childhood trauma, but opined, “I don’t know that they’re things that are haunting him or causing any kind of distress currently.” Tr. at 131. The Counselor believes that the Individual is committed to his recovery. Tr. at 132. His understanding is that the Individual last used alcohol in January 2022.<sup>4</sup> Tr. at 138. He testified that the Individual’s AUD was of mild severity. Tr. at 139, 143. OSAP plans to discharge the Individual from the program because he “has adhered to and completed all the treatment that we’ve advised and [has] met the expectations of treatment.” Tr. at 141. When the Counselor was asked about the Individual’s future plans or intentions, he testified, “He discussed with me the idea that he doesn’t want to drink in the future until he feels like his feet are more firmly on the ground with being in social situations.” Tr. at 141. The Counselor further opined that the Individual might be able to use alcohol in moderation in the future. Tr. at 142. The Counselor did not have any opinion about the Individual’s risk of relapse, but testified that “he has a positive outlook for his sobriety in the future as long as he remains faithful to his relapse prevention plan, that he relies on the coping skills that he learned and is mindful of the barriers that are going to pop up, that he has the tools that he needs.” Tr. at 142, 144. When he was asked if the Individual is in remission under the DSM-5, the Counselor testified, “Yes, technically, for sure.” Tr. at 144.

The Individual’s father testified at the hearing. He testified that the Individual does not keep alcohol in his home. Tr. at 149. After the Individual’s second DUI, the Individual understood that he could not control his alcohol use and that he needed to abstain from further alcohol use. Tr. at

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<sup>4</sup> The Counselor did not prepare the initial assessment that indicated that the Individual’s last use of alcohol occurred in early April. The initial assessment was prepared by the psychologist who conducts initial assessments on behalf of the OSAP.

150. The Individual sought professional help and has been very committed to his recovery. Tr. at 150-151. The Individual has been working hard to control his environment. Tr. at 152. The Individual plans to continue abstaining from alcohol use. Tr. at 152. The Individual has become involved in AA. Tr. at 152. They have a very tight-knit family, and the family supports the Individual in his recovery. Tr. at 151, 153. The father counts himself as part of the Individual's support network. Tr. at 153. The Individual now confides in his father. Tr. at 153. The father believes that the Individual's last use of alcohol occurred on January 16, 2022. Tr. at 154.

The Psychologist observed the testimony of the Individual's witnesses before testifying at the hearing. The Psychologist testified that he believed that the Individual has shown adequate evidence of rehabilitation or reformation from his AUD. Tr. at 158-159. The Psychologist testified, "I base that upon the chart notes from the rehabilitation program and from the testimony given by witnesses who have provided information today, including [the Individual] himself." Tr. at 159. The Psychologist noted that the Individual is engaged in AA and is finding it helpful. Tr. at 160. The Psychologist found the Individual's claim that his sobriety date is January 16, 2022, to be credible. Tr. at 160. The Psychologist testified that six months of sobriety "is a notable amount of sobriety." Tr. at 160-161. He further opined that the Individual "is on a good path and seems to be motivated . . . ." Tr. at 161. The Psychologist noted that the Individual could have had a relapse in early April 2022, "but he does seem to have a good foundation of knowledge, to me, and a good start on a program that I'm sufficiently convinced that he is a good bet in terms of having been remediated at this time." Tr. at 161. The Psychologist further testified, "Even if he did have that drink in April, I would see that as something that he had recovered from now in July and had not drank since then, or at least we have no evidence that that's the case. So I would not give that a particular heavy weight." Tr. at 161-162. He described the Individual's prognosis as "fairly good." Tr. at 162, 164-165. The Psychologist also testified that the Individual "has made some very good progress and has gained insight through treatment." Tr. at 164. He also agreed that the Individual has "a very good support system." Tr. at 164.

## V. Analysis

The Individual's testimony demonstrated a high level of insight, introspection, and intelligence. He clearly understands the significance of his AUD diagnosis and has made a strong commitment to his sobriety. However, as discussed below, contradictions between the OSAP records and the Individual's hearing testimony raise concerns regarding the Individual's credibility.

The Individual's OSAP records indicate that he consumed alcohol in early April 2022, while the Individual testified that his last alcohol use occurred on January 16, 2022. If the Individual's last use of alcohol occurred in early April, he would have only been abstaining from alcohol use for three months at the time of the hearing, which would be insufficient to establish a pattern of abstinence. More importantly, it would mean that the Individual provided false testimony under oath, and that he provided false information to his father, his counselor, and his Sponsor as well. When confronted with the information from the OSAP records indicating that the Individual used alcohol in early April 2022, the Individual testified that that information was false, and was only placed in the OSAP record in order to ensure that his treatment would be covered by his insurance.<sup>5</sup>

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<sup>5</sup> This explanation does not reflect positively upon the Individual's judgement, credibility, and trustworthiness, in colluding to provide false information to his insurance company in order to obtain treatment.

However, the Individual submitted no evidence corroborating this assertion. Moreover, while the Individual repeatedly testified that he intends to permanently abstain from alcohol use, his Counselor reported only that the Individual intended to abstain from alcohol use only “until he feels like his feet are more firmly on the ground with being in social situations.” Tr. at 141. Finally, during his hearing testimony, the Individual testified that he had not had much trauma in his life, while his records from the OSAP quite clearly indicated the contrary.

While it is possible that these contradictions have explanations, such explanations were either not provided during this proceeding, or if they were, were not sufficiently corroborated to resolve the concerns that they raise. Because the Individual has not submitted sufficient laboratory records to show that he has abstained from alcohol use since January of 2022, I would have to rely upon his testimony to conclude that he has done so. The contradictions discussed above prevent me from being sufficiently confident that the Individual’s testimony, alone, can be relied upon to resolve the security concerns raised from his two DUI arrests and his AUD, Mild, diagnosis.

### **Guideline G**

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show “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.” Adjudicative Guidelines at ¶ 23(a). In the present case, the Individual’s alcohol consumption may have occurred as recently as April 2022. Moreover, since the Individual’s maladaptive alcohol consumption was a symptom of his AUD, it will continue to cast doubt upon his reliability, trustworthiness, and judgment until he has shown that he has been sufficiently reformed or rehabilitated from his AUD.

The Adjudicative Guidelines further provide that an individual may mitigate security concerns under Guideline G if “[t]he 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.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged his pattern of maladaptive alcohol use and has taken the appropriate steps to overcome his AUD. However, for the reasons discussed above, he has not demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations.

The Adjudicative Guidelines also provide that an individual may mitigate security concerns under Guideline G if “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.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual has been participating in counseling and a treatment program and his Counselor testified that he has made satisfactory progress. However, the doubts raised about the Individual’s credibility prevent me from concluding that his progress has been satisfactory, since he may be concealing alcohol use.

In addition, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). In the present case, the Individual has completed a treatment program, however, the individual has not provided sufficient evidence to demonstrate a clear and established pattern of abstinence in accordance with treatment recommendations.

I therefore find that the security concerns raised by his AUD diagnosis and his two DUI arrests under Guideline G have not been resolved.

### **Guideline J**

The Individual's criminal activity concerns are inextricably linked to his AUD. Both of his arrests occurred after incidents in which the Individual was intoxicated and were clearly symptomatic of his AUD. Since the Individual has not convincingly shown that he is rehabilitated or reformed from his AUD, I find that the Individual has not yet shown that the root cause of his criminal activity has been successfully addressed.

An individual may mitigate security concerns under Guideline J if "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicative Guidelines at ¶ 32(a). In the present case, the Individual's AUD does not constitute an "unusual circumstance." Moreover, until the Individual's AUD is fully addressed, I am not convinced it is unlikely to recur.

An individual may also mitigate security concerns under Guideline J if "the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life." Adjudicative Guidelines at ¶ 32(b). In the present case, there is no evidence that the Individual was pressured or coerced into committing the two DUIs.

An individual may also mitigate security concerns under Guideline J if there is "no reliable evidence to support that the individual committed the offense." Adjudicative Guidelines at ¶ 32(b). In the present case, the Individual does not deny that he was found in an intoxicated state in his automobile on two occasions.

An individual may also mitigate security concerns under Guideline J if "[t]here is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement." Adjudicative Guidelines at ¶ 32(d). In the present case, rehabilitation would need to be in the form of rehabilitation from his AUD. The Individual has not shown that he is rehabilitated from his AUD.

I therefore find that the security concerns raised by his two arrests under Guideline J have not been resolved.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I

find that the Individual has not mitigated the security concerns raised under Guidelines G and J. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals