

Administrative Judge in this matter, and I subsequently conducted an administrative hearing. At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the DOE Psychologist. Hearing Transcript (hereinafter cited as “Tr.”). The Individual did not submit any exhibits. The LSO submitted ten exhibits (Exs. 1–10).

II. Notification Letter and Associated Security Concerns

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its concerns regarding the Individual’s eligibility for access authorization. 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 cited the following information: The DOE Psychologist’s conclusion that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5), criteria for Alcohol Use Disorder (AUD), Severe; on March 20, 2009, the Individual was arrested and charged with Driving While Intoxicated (DWI), failure to maintain lane, and improper turn; and on July 4, 2006, the Individual was arrested and charged with DWI. Ex. 1 at 1. The above allegations justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

The LSO also cited Guideline I (Psychological Conditions) as a basis for its concerns regarding the Individual’s eligibility for access authorization. Under Guideline I, “[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness.” *Id.* at ¶ 28(b). The SSC cited the DOE Psychologist’s conclusion that the Individual met the DSM-5 criteria for Posttraumatic Stress Disorder (PTSD), and Major Depressive Disorder (MDD), Recurrent, in remission and these are emotional, mental, and personality conditions that can impair judgment, reliability, stability, and trustworthiness. Ex. 1 at 1–2. The above information justifies the LSO’s invocation of Guideline I.

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 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. Findings of Fact

In October 2022, the Individual completed an LOI at the request of the LSO. Ex. 6. He reported that on July 4, 2006, he was arrested and charged with DWI, and his breath-alcohol content (BAC) registered at .10 percent. *Id.* at 2. In an April 2022 interview by an Office of Personnel Management (OPM) investigator, the Individual stated that he completed all terms of his sentence including payment of fines, completion of community service and victim impact classes, and unsupervised probation. Ex. 10 at 52. Additionally, the Individual reported that on March 20, 2009, he was arrested and charged with DWI, failure to maintain lane, and improper turn. Ex. 6 at 1; Ex. 10 at 52–53, 64. He reported being sentenced to drug court as a result, which he participated in for 15 months during which time he abstained from alcohol. Ex. 6 at 2; Ex. 10 at 53. However, he reported that he became frustrated with the drug court program because, despite remaining sober, he was not progressing as fast as other participants who had been testing positive for narcotics, so he chose to serve three months of incarceration in 2011 to complete the terms of his sentence. Ex. 6 at 2; Ex. 10 at 53.

In December 2022, the Individual underwent a psychological evaluation by the DOE Psychologist which included a clinical interview (CI). Ex. 7. During the CI, he told the DOE Psychologist that during his two-year military deployment from 2004 to 2006 while serving in the U.S. Army, he was involved in two roadside bombings, and subsequently qualified for disability based on PTSD, physical injuries, and a traumatic brain injury. *Id.* at 4. He stated that one month after returning home from his deployment in 2006, his father passed away, and the Individual’s alcohol consumption increased to daily use. *Id.* He told the DOE Psychologist that although he later recognized that he drank alcohol to ease his symptoms of PTSD and depression, he had no insight in 2006, and was arrested and charged with DWI in July 2006. *Id.* After his second DWI arrest and charge in March 2009, he reported that during his participation in drug court, he attended alcohol-treatment including individual counseling sessions and group meetings. *Id.* at 5. He stated that after he abstained from alcohol during drug court, he started to experience symptoms of insomnia and frequent nightmares. *Id.*

During the CI, the Individual also reported having his first major depressive episode in 2010 to 2011, followed by three or four episodes each lasting two to three weeks, during subsequent years. *Id.* at 10. He stated that in 2011, he began seeing his first mental health provider, a psychiatrist through the Veterans Affairs (VA) hospital, who treated him for depression and anxiety associated with PTSD. *Id.* at 6. The psychiatrist treated the Individual through 2014, prescribed psychotropic medications, and the Individual also participated in two group therapy programs including one that focused on PTSD. *Id.* The Individual reported that after ten months of taking medication, he started forgetting to take his medications, so he stopped taking them, and he had also stopped attending group therapy

because he was working more hours. *Id.* He resumed consuming alcohol with an average consumption of ten to fifteen 16-ounce pints of beer per day. *Id.*

During the CI, the Individual also reported that in 2019, he chose to return to school through a VA program, however, because he had previously left school due to his 2009 DWI, and again in 2015 due to anxiety, the VA required him to participate in individual therapy, work with a substance abuse counselor, and take prescribed psychotropic medication. *Id.* at 7. The Individual stated that he worked with a treating psychologist for two years starting in 2019, and he worked with a substance abuse counselor for nine months. *Id.* He also took medication which helped his symptoms, but reported that when he stopped taking them consistently, his doctor had him stop completely. *Id.* The Individual told the DOE Psychologist that his symptoms of depression are currently in remission, his last depressive episode occurred in 2020, and he only experiences PTSD symptoms when triggered. *Id.* at 8, 10.

The Individual also reported to the DOE Psychologist that he has significantly decreased his alcohol consumption since the pandemic. *Id.* at 7. He stated that working with his treating psychologist helped him learn methods to better control his alcohol use. *Id.* The Individual reported that while his past consumption averaged twenty-four 16-ounce beers per week, he currently drinks between nine to thirteen 16-ounce beers per week. *Id.* As part of the evaluation, the Individual underwent a Phosphatidylethanol (PEth) test, which was positive at a level of 74 ng/mL. *Id.* at 8. The physician who interpreted the PEth results indicated that a positive PEth test at that level is congruent with significant alcohol consumption. *Id.* at 33.

Ultimately, the DOE Psychologist concluded the Individual met the diagnostic criteria for AUD, Severe. *Id.* at 11. She recommended that to demonstrate rehabilitation or reformation of AUD, the Individual should abstain from alcohol for at least one year; participate in Alcoholics Anonymous (AA) for one year with a minimum of three meetings per week and evidence of working the steps with a sponsor; and participate in an intensive outpatient program (IOP) with a counselor who is knowledgeable in co-occurring disorders, particularly PTSD. *Id.* at 11–12. She also recommended that the Individual participate in his employer’s Employee Assistance Program (EAP) and undergo frequent and random BAC tests. *Id.* at 12. Additionally, the DOE Psychologist diagnosed the Individual with PTSD and MDD, Recurrent, in remission. *Id.* She opined that the Individual’s depressive disorder has led to periods of unreliability, increased alcohol consumption, and poor judgment, and she recommend that the Individual continue his cognitive behavioral therapy and consult with a psychiatrist regarding antidepressants and other possible medications. *Id.* at 12.

At the hearing, the Individual testified to the same information regarding his 2006 DWI and his 2009 DWI that he provided in his LOI and during the CI with the DOE Psychologist. *See e.g.*, Tr. at 43–46, 50–55; Ex. 6 at 1–3; Ex. 7 at 4–5. He further testified as part of his drug court sentence for his 2009 DWI, that he participated in alcohol classes in drug court that were “like alcohol treatment” in a “non-12 step AA program” where they discussed theories regarding alcohol use, did a lot of sharing their stories about their alcoholism, and attended group meetings. Tr. at 52. He stated he also had to attend several AA meetings, however, he testified that he did not find AA to be helpful because the people in AA “hate” the court appointed participants. *Id.* at 62. He explained that the main point regarding the first part of AA is “admitting that you have a problem and hitting rock bottom [s]o if you don’t do that and you’re just there to get your [attendance] paper signed . . . they don’t like it at

all.” *Id.* at 62–63. The Individual testified that he abstained from alcohol for 15 months while participating in drug court. *Id.* at 52.

The Individual testified that in 2011, after he was released from jail, he contacted the VA where he began participating in a weekly PTSD treatment group which taught him coping skills to help manage his PTSD symptoms. *Id.* at 59–60. Additionally, he testified that he participated in individual counseling with a mental health counselor bi-monthly for approximately one-and-a-half years until mid-2013. *Id.* at 63, 66. He stated that the counselor diagnosed him with PTSD and depression, and focused on treating those conditions including his PTSD symptoms, but did not really work on his alcohol issues. *Id.* at 64–65. During that time, he stated he was consuming between six to ten alcoholic beverage a night, approximately four times per week. *Id.* at 66. The Individual testified that he stopped seeing his counselor in mid-2013 because he was “too busy [and] lazy to set up his . . . appointment[s].” *Id.* at 65–66.

The Individual testified that in 2019, consistent with this LOI response, he resumed attending counseling through the VA. Tr. at 68; Ex. 6 at 7. He testified that he received mental health and alcohol-related treatment through a treating counselor who, according to his statements in the CI, was a psychologist (treating psychologist). Tr. at 68–69; Ex. 7 at 7. He stated that his treating psychologist worked with him to address his alcohol usage, and used a cognitive behavioral approach to address his anxiety symptoms and identify and change destructive thinking patterns. Tr. at 68–69; Ex 7 at 7. He testified that when he stopped taking his medication which had been prescribed as part of his treatment, his friends noticed his behavior became more irritable. *Id.* at 70. He stated that while he participated in counseling with his treating psychologist, he decreased his alcohol consumption particularly during weeknights. *Id.* at 70. The Individual stated that he last saw his treating psychologist in approximately late 2021. *Id.* at 92.

Regarding his current alcohol use, the Individual testified that since he received the DOE Psychologist’s Report in February 2023, he has further decreased his alcohol consumption and he asserted that he wants to get his alcohol consumption “somewhat under control.” *Id.* at 72. He testified that since February 2023, he usually consumes alcohol approximately three times per week, and he has decreased his Friday night consumption to six alcoholic drinks. *Id.* at 71. He stated that he last consumed alcohol on the night before the hearing when he drank two beers, and he last drank to intoxication approximately two weeks before the hearing. *Id.* at 79, 86. He asserted that in the future, he will not consume alcohol if he is driving. *Id.* at 79, 90. He testified that he does not plan to abstain from alcohol in the future, but can further decrease his Friday night consumption. *Id.* at 79. The Individual stated he believes he has a problem with alcohol, but asserted he does not believe he is an alcoholic. *Id.* at 79, 89. He indicated his belief that he has less of an alcohol problem than in the past, and he asserted that if he drinks alcohol responsibly, then he believes it is acceptable for him to consume alcohol. *Id.* at 76, 79, 95.

The Individual indicated that he agreed overall with the DOE Psychologist’s Report including her conclusions about his alcohol use, although he stated that he disagreed with her recommendation to attend AA because he did not find AA to be helpful in the past. *Id.* at 73–74. He testified that he has not entered an IOP program, and indicated his hesitation in doing so because he thinks it might be similar to the prior programs he attended where it will not be very effective unless a person believes he is an alcoholic, and he has concerns about the time commitment of an IOP. *Id.* at 76–77, 88–89.

He stated he has not undergone alcohol testing as recommended by the DOE Psychologist, but asserted he is willing to do so. *Id.* at 78. The Individual testified he has not attended mental health counseling as recommended by the DOE Psychologist, however, he asserted that he plans to contact his prior treating psychologist so he can resume counseling with him. *Id.* at 82, 92–93. He testified that he has not inquired about attending his employer’s EAP. *Id.* at 77. He asserted that he does not have any current symptoms of depression or anxiety. *Id.* at 82. He stated that the last time he experienced depressive and stress-related symptoms was a month-and-a-half ago, due to the difficult demands of school and work, however, he asserted that he successfully coped with his symptoms by obtaining support from his classmates, and engaging in social activities with others. *Id.* at 90–91.

After observing the Individual’s testimony, the DOE Psychologist testified that as of the date of the hearing, the Individual still has the same diagnoses as stated in her Report. *Id.* at 113. She stated that her recommendation regarding AA participation was based on research which shows that AA can help participants diagnosed with an AUD to maintain their sobriety, including by providing participants with the opportunity to engage in a continual effort with an ongoing support system to assist them in addressing stressors that could affect their abstinence. *Id.* at 108. She also testified that her IOP recommendation is based on research that shows that an IOP is the best type of program for someone who has a diagnosis of AUD, Moderate to Severe, and it is more flexible in time commitment than an inpatient program. *Id.* at 109. The DOE Psychologist further testified that she had recommended one year of abstinence, and indicated her concerns regarding the Individual’s assertions that he can drink alcohol in a reasonable manner, based on her knowledge of research regarding the prognosis of some groups of people who attempt controlled drinking. *Id.* at 107, 115–117.

The DOE Psychologist noted that the Individual’s decrease in his alcohol use is a positive attribute. *Id.* at 112. However, she concluded that the Individual had not demonstrated adequate evidence of rehabilitation or reformation for his AUD because he is still consuming alcohol, and there is no indication that he has worked towards completing her recommendations. *Id.* at 113. Regarding the individual’s MDD, the DOE Psychologist stated that it is in remission, but was unable to provide a prognosis because he is not undergoing treatment. *Id.* at 113–14. Regarding the Individual’s PTSD, the DOE Psychologist concluded that the Individual has not shown reformation because he has not made any effort to receive any type of counseling to, for example, develop coping strategies to address his symptoms. *Id.* at 114. She indicated that it is important for the Individual to obtain counseling because his PTSD is a long-standing issue, and his PTSD symptoms have also led to his alcohol use in the past. *Id.* The DOE Psychologist explained that she could not give a prognosis regarding the Individual’s condition because “until someone is in treatment, it’s hard to give a prognosis” as she indicated she would need to understand the nature and progress of his treatment. *Id.*

V. Analysis

A. Guideline G

Conditions that could 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.

In this case, the DOE Psychiatrist diagnosed the Individual with AUD, Severe, and the Individual admitted that he is still consuming alcohol to the point of intoxication against treatment recommendations. Moreover, the night prior to the hearing, the Individual consumed alcohol and stated he does not have plans to abstain from alcohol. Additionally, the Individual has a history of previously entering treatment, abstaining from alcohol for a temporary period, but subsequently relapsing. For these reasons, I cannot find that so much time has passed, that his behavior was infrequent, or that it occurred under unusual circumstances such that the concerning alcohol consumption and related behavior is unlikely to recur or does not cast doubt on the Individual's current reliability, trustworthiness, or judgment. Thus, I find that the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual acknowledged that he has an alcohol problem, however, he stated that he does not believe he is an alcoholic, and asserted that as long as he is able to consume alcohol responsibly, he believes it is acceptable for him to continue consuming alcohol. While he has recently decreased his alcohol consumption, he is still drinking to intoxication as recently as two weeks prior to the hearing. In addition, he has necessarily failed to demonstrate a pattern of abstinence in accordance with the DOE Psychologist's treatment recommendation: he is not abstinent nor has he begun any form of recommended alcohol treatment. Accordingly, I find the second mitigating condition is inapplicable. *Id.* at ¶ 23(b). The third mitigating condition is inapplicable because the Individual is not currently enrolled in alcohol-related counseling and has previously relapsed after participating in alcohol-related counseling. *Id.* at ¶ 23(c). For the reasons stated above, the fourth mitigating condition is inapplicable. *Id.* at ¶ 23(d).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline G are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline I

Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

In this case, the DOE Psychologist diagnosed the Individual with PTSD and MDD, Recurrent, in remission. The DOE Psychologist recommended that the Individual continue his cognitive behavioral therapy and consult with a psychiatrist regarding antidepressants and other possible medications. I find that the first two mitigating conditions regarding the Individual's PTSD and MDD under Guideline I are inapplicable because the Individual testified that he has not currently pursued any mental health counseling, and he has not seen his prior treating psychologist since approximately 2021. *Id.* at ¶ 29(a)–(b).

I note that the DOE Psychologist opined at the hearing that the Individual's MDD is currently in remission. However, she was not able to provide a prognosis since the Individual was not participating in any mental health treatment. Therefore, the record does not contain an opinion from a duly qualified mental health professional that the Individual's MDD has a low probability of recurrence or exacerbation. Regarding the Individual's PTSD, the DOE Psychologist opined that the Individual has not shown adequate evidence of reformation of his PTSD because he has not made any effort to receive any type of counseling including to develop coping strategies to address his symptoms. Moreover, the DOE Psychologist was not able to provide a prognosis of a low probability of

recurrence or exacerbation of the Individual's PTSD symptoms. Accordingly, I find that the third mitigating condition regarding the Individual's MDD and PTSD is inapplicable. *Id.* at ¶ 29(c).

Regarding the fourth and fifth mitigating factors, as stated above, the DOE Psychologist opined that the Individual's MDD is currently in remission. However, she did not opine that the condition was temporary, nor did she conclude that the situation has resolved, and she did not opine that the Individual no longer shows indications of emotional instability. The DOE Psychologist also testified that the Individual's PTSD is a longstanding condition, and she did not conclude that the condition has been resolved. She further opined as to the significance of the Individual's need to develop coping strategies to get through his PTSD symptoms because these symptoms have additionally led to the Individual's alcohol use in the past. Moreover, the Individual has not offered a rebuttal opinion from a mental health professional that he has overcome his PTSD or his MDD. Instead, he testified that his last depressive and stress-related symptoms occurred approximately one month ago and asserted he successfully coped with them. However, the Individual's statements alone are insufficient to overcome the concerns raised by the DOE Psychologist's opinion. For the foregoing reasons, I find that the fourth and fifth mitigating factors regarding the Individual's MDD and PTSD are inapplicable. *Id.* at ¶ 29(d)–(e).

For the aforementioned reasons, none of the mitigating conditions are applicable in this case. Therefore, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

VI. Conclusion

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

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals