

violence in 2017. *Id.* at Bates 175, 203. In response to a letter of interrogatory (LOI) from the local security office (LSO), the Individual indicated that he had consumed alcohol prior to both his 2014 and 2017 arrests. Ex. 6 at Bates 22, 26.

At the request of the LSO, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation on January 30, 2023. Ex. 7 at Bates 40–41. The DOE Psychologist subsequently issued a report of the psychological evaluation (Report) in which she opined that the Individual habitually or binge consumed alcohol to the point of impaired judgment and that a diagnosis of Unspecified Alcohol-Related Disorder (UAD) was “warranted” under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at Bates 45–46.

The LSO issued the Individual a Notification Letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines. Ex. 1 at Bates 5.

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 conducted an administrative hearing. The LSO submitted ten exhibits (Exs. 1–10). The Individual submitted five exhibits (Exs. A–E). The Individual testified on his own behalf and offered the testimony of his current girlfriend (Individual’s Girlfriend), three coworkers, and a licensed mental health counselor (Individual’s Counselor). Hearing Transcript (Tr.) at 3–4, 12, 26, 36, 54, 71. The LSO offered the testimony of the DOE Psychologist. *Id.* at 4, 112.

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 to suspend the Individual’s access authorization. Ex. 1 at Bates 5. “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 Individual’s 2014 and 2017 alcohol-related arrests for assault, the DOE Psychologist’s opinion that the Individual habitually or binge consumed alcohol to the point of impaired judgment, and the DOE Psychologist’s diagnosis of the Individual with UAD. Ex. 1 at Bates 5. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, habitually or binge consumed alcohol to the point of impaired judgment, and was diagnosed with UAD by a duly qualified mental health professional justify its 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) (strong presumption against the issuance of a security clearance).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *Id.* at § 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 2014, when he was 21 years old, the Individual took a trip with several of his friends to celebrate his birthday. Ex. 6 at Bates 22; Ex. 10 at Bates 281–82. The Individual brought his handgun on the trip, intending to go to a firing range. Ex. 6 at Bates 22. The Individual and his friends consumed significant quantities of alcohol while celebrating and engaged in an altercation. *Id.* (indicating that the Individual consumed "at least [] 8 drinks in a matter of 12 hours" and alleged that the friends physically assaulted him); *but see* Ex. 10 at Bates 296 (reflecting the statement of the friends to a law enforcement officer that the argument was verbal and concerned the Individual's excessive intoxication). The friends called the police and alleged that the Individual had threatened them with his handgun. Ex. 10 at Bates 295–96. The Individual was arrested and charged with Assault with a Deadly Weapon. *Id.* at Bates 296. The charges against the Individual were dismissed in 2015. *Id.* at Bates 297.

In 2017, the Individual and his girlfriend at that time argued after consuming alcohol. Ex. 6 at Bates 26 (indicating that they each consumed at least six beers prior to the argument); Ex. 10 at Bates 284, 299. The argument escalated, and the girlfriend struck the Individual in the face causing him to bleed. Ex. 10 at Bates 299. The Individual and the girlfriend both called the police and provided differing accounts of how the Individual sustained his injuries. *Compare id.* at Bates 284 (reflecting the Individual's statement that the girlfriend pushed him during the verbal argument, he attempted to restrain her hands, and she then struck him repeatedly in the face) *with id.* at Bates 299 (reflecting the girlfriend's allegations that, during the argument, the Individual demanded sexual intercourse and she struck him in self-defense after he attempted to sexually assault her). The Individual was arrested, but he was never charged with any offense, and the case file prepared by law enforcement was labeled "unfounded." *Id.* at Bates 299–300; Tr. at 110.

The Individual and his girlfriend separated in November 2019, at which point he began consuming a 750 mL bottle of rum nearly daily to cope with emotional distress. Ex. 7 at Bates 42. The Individual's parents, with whom he resided at that time, eventually presented him with an

ultimatum to seek treatment or leave their home. *Id.* In April 2020, the Individual enrolled in alcohol-related treatment at a substance abuse treatment center (Treatment Center). Ex. 10 at Bates 163. At the time that he enrolled in treatment, the Individual reported to clinicians at the Treatment Center that he was experiencing “blackouts” and would have “the shakes” the day after drinking alcohol. *Id.* at Bates 184–85. Clinicians at the Treatment Center diagnosed the Individual with “Alcohol Dependency, Moderate.” *Id.* at Bates 185.

The Individual attended seven individualized counseling sessions and two group counseling sessions through the Treatment Center from April to June 2020. *Id.* at Bates 184.³ The Individual decided to stop attending treatment in June 2020 because he perceived that “it was the same thing over and over [and he] didn’t feel like attending [since he had] already stopped drinking.” Ex. 7 at Bates 43; Tr. at 86. The Individual abstained from alcohol consumption for several months while attending treatment, but he resumed alcohol consumption in August 2020. Ex. 6 at Bates 29. The Individual later entered into a relationship with another woman with whom he became intoxicated on an at least weekly basis. Ex. 7 at Bates 42. Following the end of that relationship,⁴ the Individual entered into a relationship with the Individual’s Girlfriend in March 2022. Tr. at 56 (reflecting the testimony of the Individual’s Girlfriend at the hearing). The Individual’s Girlfriend perceived that the Individual’s alcohol consumption “was a concern” at times, and she observed him displaying what she believed to be symptoms consistent with hangovers on an approximately weekly basis. *Id.* at 66, 68.

On January 30, 2023, the Individual met with the DOE Psychologist for a clinical interview. Ex. 7 at Bates 41. The Individual told the DOE Psychologist that he last become intoxicated about one month prior to the clinical interview, on New Year’s Eve, when he consumed six beers and three or four shots of liquor over five or six hours. *Id.*; *see also* Tr. at 108 (reflecting the Individual’s admission at the hearing to having “binge drank over the holidays”). The Individual represented to the DOE Psychologist that he usually consumed two to three beers on weekends and no alcohol on weekdays, but that he had consumed approximately seven beers over the weekend prior to the clinical interview. Ex. 7 at Bates 41.

At the request of the DOE Psychologist, the Individual provided a sample for a Phosphatidylethanol (PEth) test.⁵ *Id.* at Bates 45. The PEth test was positive at a level of 232 ng/mL. *Id.* at Bates 63. According to the medical doctor who interpreted the PEth test results, the Individual’s PEth level was “congruent with heavy alcohol consumption” and exceeded the mean PEth level of participants in one study who reported consuming up to 4.3 alcoholic drinks per day. *Id.*

³ In his response to the LOI, the Individual falsely claimed to have attended twice weekly group counseling sessions through the Treatment Center from April 2020 to September 2020 when he in fact only attended nine total sessions and discontinued treatment in June. Ex. 6 at Bates 31.

⁴ The relationship ended with the suicide of the woman with whom the Individual was in a relationship, which the Individual indicated led him to consume more alcohol to cope with his emotions related to the event. Tr. at 88–89.

⁵ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol up to four weeks prior to sample collection. Ex. 7 at Bates 45, 62.

The DOE Psychologist issued her Report on February 19, 2023. *Id.* at Bates 46. In the Report, the DOE Psychologist opined that the results of the PEth test showed that the Individual was either habitually or binge consuming alcohol to the point of impaired judgment.⁶ *Id.* She further opined that he “warrant[ed] a diagnosis of [UAD]” based on his history of heavy alcohol consumption, legal and interpersonal problems related to alcohol consumption, diagnosis of Alcohol Dependency by the Treatment Center, and heavy alcohol consumption following treatment.⁷ *Id.* The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by completing an intensive outpatient program (IOP) for alcohol treatment followed by aftercare for a total of nine months of treatment, abstaining from alcohol for at least nine months, and undergoing monthly PEth testing to provide evidence of his abstinence from alcohol. *Id.*

The LSO first provided the Individual with the Report on May 9, 2023, as an attachment to the Notification Letter. Tr. at 83 (showing the Individual’s testimony at the hearing as to when he received the Report); Ex. E. Shortly after receiving the Report, the Individual and the Individual’s Girlfriend decided to stop consuming alcohol. Tr. at 56, 83 (presenting the Individual’s and the Individual’s Girlfriend’s testimony at the hearing to that effect). The Individual enrolled in a sixteen-week IOP through the Treatment Center which commenced on June 16, 2023, and was ongoing as of the date of the hearing. *Id.* at 36–37, 87–88 (containing the Individual’s Counselor’s and the Individual’s hearing testimony as to the Individual’s treatment). The Individual’s treatment in the IOP includes one individualized counseling session and three group counseling sessions each week. *Id.* at 37, 44. The IOP’s treatment is focused on relapse prevention, coping skills, and developing healthy hobbies and relationships. *Id.* at 38.

Through treatment, the Individual identified boredom, lack of routine, stress, and celebratory emotions as triggers for him to drink. *Id.* at 38, 91 (reflecting the testimony of the Individual and the Individual’s Counselor). The Individual is working on identifying and managing emotions, pursuing healthy hobbies with friends who do not consume alcohol, taking walks, and using deep breathing to help him address the triggers that have previously led him to engage in alcohol consumption. *Id.* at 38–40, 90–92. The Individual’s Counselor has been working on reframing the Individual’s belief that he can have “just one” drink and improving his refusal skills in social situations. *Id.* at 39.

At the hearing, the Individual’s Counselor testified that he has been open and engaged in treatment and is making good progress. *Id.* at 40. She opined that the Individual’s prognosis is “very good.” *Id.* at 42. The Individual’s Counselor has recommended that he participate in aftercare and Alcoholics Anonymous following his completion of the IOP. *Id.* at 46.

⁶ The DOE Psychologist defined “binge drinking” as “a level of intoxication that is markedly and episodically higher than what is typical for [the Individual]” and noted that “[t]he Substance Abuse and Mental Health Services Administration defines binge drinking as five or more alcoholic drinks for males . . . on the same occasion on at least one day in the past month.” Ex 7 at Bates 47. The DOE Psychologist defined “habitual” alcohol consumption as “approximately monthly intoxication.” *Id.*

⁷ The *DSM-5* indicates that UAD “applies to presentations in which symptoms characteristic of an alcohol-related disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any specific alcohol-related disorder” AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 503 (5th ed. 2013).

The Individual testified at the hearing that he stopped consuming alcohol because he perceives that his “career . . . is much more important . . . than consuming alcohol,” and that he intends to “remain abstinent [from] alcohol” in the future. *Id.* at 83–84; *see also id.* at 22 (reflecting testimony from a coworker of the Individual that the Individual had communicated the intent to abstain from alcohol use in the future); *id.* at 42 (reflecting the testimony of the Individual’s Counselor that the Individual expressed the intention to abstain from alcohol in the future). The Individual avoids situations in which he may be tempted to consume alcohol, has disassociated from friends with whom he used to consume alcohol, and has used hobbies as an outlet to reward himself after completing a difficult task when he would have consumed alcohol in the past. *Id.* at 91–95; *see also id.* at 60 (reflecting the testimony of the Individual’s Girlfriend that she has observed him refuse alcohol in social settings since he stopped consuming alcohol in May). The Individual provided the results of PEth testing conducted on June 16, July 14, August 16, and September 8, 2023, each of which was negative for traces of alcohol consumption. Ex. A at 2–5.

The DOE Psychologist testified that, based on the information provided by the Individual during the hearing, including his approximately four months of abstinence from alcohol, she would modify his diagnosis to UAD in early remission. Tr. at 113. She opined that the Individual’s risk of relapse was “probably low” based on his testimony showing that he had “internalized” the relapse prevention skills he was being taught in the IOP. *Id.* at 116. However, she also indicated that research showed that achieving six months of abstinence was particularly significant to a person’s recovery and that she would have had significantly greater confidence in the Individual’s recovery with additional time having abstained from alcohol. *Id.* at 117. Based on the fact that the Individual had achieved only four months of abstinence from alcohol as of the date of the hearing, she opined that he had not established an adequate period of abstinence or treatment for her to conclude that his UAD did not impair his judgment, reliability, or trustworthiness. *Id.* at 114.

V. ANALYSIS

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; 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.

Id. at ¶ 23.

The Individual has a lengthy pattern of binge drinking that he admitted continued until as recently as nine months prior to the hearing. The Individual's self-admitted binge drinking persisted for many years and occurred during significantly different stages in the Individual's life. Although the Individual has demonstrated a period of abstinence from alcohol, he previously relapsed after a comparable period of abstinence from alcohol and the DOE Psychologist testified convincingly that more time is needed to confidently determine that the Individual's problematic alcohol consumption is unlikely to recur. For these reasons, I find that the first mitigating condition is not applicable to the Individual's binge drinking. *Id.* at ¶ 23(a). As the security concerns posed by the Individual's binge drinking are not resolved, and the Individual's prior arrests occurred on occasions in which the Individual consumed alcohol to excess, I cannot determine that this behavior is unlikely to recur. Thus, I find that the security concerns posed by the Individual's prior arrests are likewise not resolved under the first mitigating condition. *Id.*

The Individual has acknowledged his pattern of maladaptive alcohol use and is currently taking action to overcome the problem. However, as of the date of the hearing, he only achieved four months of the nine months of abstinence from alcohol recommended by the DOE Psychologist. Thus, he has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, and the second mitigating condition is inapplicable. *Id.* at ¶ 23(b).

The Individual received treatment at the Treatment Center and abstained from alcohol for about four months in 2020, only to relapse. Thus, the third mitigating condition is inapplicable, despite the Individual's satisfactory progress in a treatment program, because of his relapse following treatment. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual has yet to complete nine months of treatment and aftercare as recommended by the DOE Psychologist. *Id.* at ¶ 23(d).

Having concluded that none of the mitigating conditions are applicable to the DOE Psychologist's diagnosis of the Individual with UAD or the Individual's admitted binge drinking to the point of impaired judgment, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.⁸

⁸ The Individual implied that the LSO's failure to provide him with the Report until May 2023, nearly three months after it was prepared by the DOE Psychologist, impaired his ability to mitigate the security concerns because he lacked sufficient time to comply with the DOE Psychologist's recommendations. However, the hearing concerning this matter was held on September 20, 2023, nearly seven months from the date on which the DOE Psychologist issued the Report. As the DOE Psychologist recommended that the Individual demonstrate nine months of treatment and abstinence from alcohol, he could not have fully complied with the DOE Psychologist's recommendation regardless of when the LSO served him with the Report. The Adjudicative Guidelines anticipate this scenario, and allow an individual who is still participating in treatment as of the date of the hearing to mitigate the security concerns if they are making satisfactory progress and have "no previous history of treatment and relapse." Adjudicative Guidelines at ¶ 23(c). However, the Individual's prior treatment and relapse negated the applicability of this mitigating condition. Thus, the security concerns presented by the Individual's prior treatment and relapse are responsible for his failure to mitigate the security concerns, not the LSO's delay in serving the Report on the Individual.

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 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 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