



The Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation on April 28, 2023. Ex. 8 at 96. Following the evaluation, the DOE Psychologist issued a report (Report) in which she concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*, and that the Individual engaged in frequent episodes of binge drinking that resulted in impaired judgment. *Id.* at 102.

The LSO issued the Individual a letter notifying her that it possessed reliable information that created substantial doubt regarding her 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 (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her 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 ten exhibits (Ex. 1–10). The Individual submitted one exhibit with five subparts (Ex. A1–A5). The Individual offered the testimony of one witness and testified on her own behalf. Hearing Transcript, OHA Case No. PSH-23-0124 (Tr.) at 9, 21. The LSO offered the testimony of the DOE Psychologist. *Id.* at 44.

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

The LSO cited Guideline G of the Adjudicative Guidelines as the basis for its suspension of the Individual’s 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 opinion that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Moderate, under the *DSM-5* and that she engaged in binge drinking to the point of impaired judgment, as well as the Individual’s alcohol-related arrest. Ex. 1. The LSO’s allegation that the Individual engaged in alcohol-related incidents away from work, the DOE Psychologist’s opinion that the Individual binge consumed alcohol to the point of impaired judgment, and 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).

## **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

On February 27, 2023, the Individual was arrested and charged with Aggravated DUI after she crashed her vehicle into a guardrail and failed a breath test administered by a law enforcement officer. Ex. 6 at 74. The Individual’s blood alcohol concentration was measured at .27. *Id.* at 75.

After her arrest, the Individual completed a six-week alcohol awareness and education course through the DOE contractor’s Employee Assistance Program. Ex. 2 at 9. She also completed random breath tests from March through June 2023, all of which were negative for traces of alcohol use.<sup>3</sup> *Id.* at 10–41; Tr. at 23–24.

The Individual met with the DOE Psychologist for a psychological evaluation on April 28, 2023. Ex. 8 at 96. As part of the evaluation, the DOE Psychologist conducted a clinical interview during which the Individual explained the circumstances around the arrest for Aggravated DUI. *Id.* at 107–08. The Individual reported having consumed alcohol to intoxication as frequently as twice weekly in the years preceding the arrest. *Id.* at 99–100. She also told the DOE Psychologist that she consumed greater amounts of alcohol during periods of her life where she was experiencing sadness or family tragedy. *Id.* at 98–99. The DOE Psychologist noted that the Individual denied having felt intoxicated prior to driving on the day of the arrest, which the DOE Psychologist inferred was evidence that the Individual had developed a tolerance to alcohol as a result of heavy alcohol consumption. *Id.* at 99–100.

The Individual stated that the DOE contractor placed her on “temporary restrictions which include[d] abstain[ing] from alcohol, daily alcohol testing, attend[ing] and complet[ing] the Employee Assistance Program six-week alcohol education cour[se], get[ting] an alcohol assessment and follow[ing] whatever recommendations are made based upon that assessment.” *Id.* at 108. The Individual explained that she underwent that required evaluation which did not find any indication of alcohol abuse but did lead to a suggestion for grief counseling because the

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<sup>3</sup> The Individual submitted evidence that she underwent additional laboratory testing, but this evidence did not include the results of the tests. Ex. 2 at 11, 15, 18, 26, 28, 30, 32, 34, 36, 38, 40, 44. As the Individual underwent breath testing through the DOE contractor and blood testing at the recommendation of the DOE Psychologist that sufficiently demonstrated that she had not consumed alcohol since February of 2023, I assigned no weight to the laboratory testing for which there was no results. *See infra* p. 4 (describing the laboratory testing performed at the recommendation of the DOE Psychologist).

evaluator believed the Individual was consuming alcohol as a coping mechanism for family-related stressors. *Id.* at 119. After the clinical interview, the Individual provided a sample for a phosphatidylethanol (PEth) blood test,<sup>4</sup> the results of which were negative for traces of alcohol consumption. *Id.* at 101.

The DOE Psychologist issued her Report on May 8, 2023. *Id.* at 103. In the Report, she opined that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Moderate, under the *DSM-5* and engaged in frequent episodes of binge drinking that resulted in impaired judgment. *Id.* at 102. She recommended that the Individual demonstrate rehabilitation by: abstaining from alcohol for at least six months; attending at least twelve weeks of alcohol rehabilitation counseling, including group and individual components, or participating in Alcoholics Anonymous (AA) at least three times weekly, including working the 12 steps of the AA program with a sponsor; and undergoing PEth tests every four to six weeks over the six-month abstinence period. *Id.* at 102–103.

The Individual provided samples for PEth tests in June, July, August, September, and October of 2023. Ex. A1–5. Each of these tests came back negative for traces of alcohol consumption. *Id.*; Tr. at 26.

The Individual’s husband testified at the hearing that he and the Individual had been married for 23 years. Tr. at 10. He testified that he believed that the Individual “had a drinking problem” prior to her arrest for Aggravated DUI because she would consume alcohol “every time that she would go to her mom’s house” and would “always smell like [] she was drinking” when she returned. *Id.* at 13. He indicated that he had not seen his wife consume any alcohol since her arrest for Aggravated DUI in February. *Id.* at 14. He also testified that he supported her recovery but was unaware of whether she had received treatment. *Id.* at 16–17 (testifying that he thought “she attended [] one treatment” but was not aware of any details).

The Individual testified that she had last consumed alcohol on February 27, 2023, the day of her Aggravated DUI arrest. *Id.* at 21–22. She explained that after spending the night in jail, she knew that she “didn’t want to go through [a DUI] ever again,” and, therefore, she decided not to consume alcohol again. *Id.* at 22. The Individual further testified that the idea of consuming alcohol again “terrorizes” her because of how upsetting she found her car accident and subsequent Aggravated DUI arrest. *Id.* at 22, 38. Shortly after her arrest, she completed a six-week alcohol education course through the DOE contractor, which she said “opened [her] mind and eyes as to how – how drinking and driving could affect, not only yourself, [but also] your family, and everyone surrounding you.” *Id.* at 28, 30. The Individual testified that she did not participate in treatment recommended by the DOE Psychologist because she was very busy and did not have time between work and her family responsibilities. *Id.* at 37–38. The Individual also indicated that she did not attend AA meetings as recommended because, approximately three years ago, she had gone to four to five AA meetings to support a friend who had been arrested for DUI. *Id.* at 33. The Individual found the AA meetings to have been “disappointing” and “a waste of time” based on what she perceived to have been the negative attitudes of the other participants, and therefore she decided not to attend AA meetings as recommended by the DOE Psychologist. *Id.* at 32, 42.

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<sup>4</sup> In her report, the Psychologist explained “[t]he PEth test detects any significant alcohol use over the past three to four weeks.” Ex. 8 at 101.

When asked if she had developed any coping strategies for dealing with grief and tragedy instead of consuming alcohol, the Individual stated that she and her mother console each other over deceased family members but “[they’ve] got to let them go.” *Id.* at 34. The Individual also testified that her husband and other friends and family members have consumed alcohol around her since her arrest for Aggravated DUI, and their consumption does not bother her. *Id.* at 35. The Individual has declined alcohol offered to her at family gatherings and explained that she is no longer consuming alcohol, and everyone has been supportive of that decision. *Id.* at 35, 42.

The DOE Psychologist opined that the Individual’s AUD was in early remission.<sup>5</sup> *Id.* at 45. However, the DOE Psychologist also expressed concern that the Individual had described her motivation for becoming abstinent from alcohol as “fear based” rather than as a decision that the Individual came to based on treatment or counseling. *Id.* at 47. She explained that “fear-based abstinence can last, but it doesn’t always,” whereas those who receive a treatment-based intervention have much better long-term success in maintaining their abstinence from alcohol. *Id.* at 47–48. Because of the Individual’s lack of treatment and relatively short period of abstinence from alcohol, the DOE Psychologist opined that the Individual’s prognosis was “fair.” *Id.* at 50.

## 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; 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.

*Id.* at ¶ 23.

The Individual began abstaining from alcohol approximately eight months prior to the hearing. Prior to that, the Individual’s self-described alcohol consumption was neither infrequent nor did it occur under unusual circumstances. The Individual testified that she regularly drank after upsetting visits with her mother, and she was unable to describe any coping methods or treatments that she

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<sup>5</sup> The DOE Psychologist defined “early remission” as when a person has not consumed alcohol for between three and twelve months. Tr. at 45–46.

had pursued that would prevent this from occurring in the future. Considering the Individual's lack of treatment, and the DOE Psychologist's testimony concerning the limitations of fear-based abstinence from alcohol in the absence of treatment, I cannot find that a period of eight months of abstinence from alcohol is sufficient to establish that so much time has passed that the Individual's problematic alcohol-related behavior is unlikely to recur. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual has, through witness testimony and the PEth test results she submitted, established a clear pattern of abstinence from alcohol over the eight months between her arrest for Aggravated DUI and the hearing. However, the Individual has not acknowledged that her alcohol use was maladaptive, nor has she completed any of the treatment recommended by the DOE Psychologist. Thus, the Individual has not established the applicability of the second mitigating condition. *Id.* at ¶ 23(b).

While the Individual did complete an alcohol education course, she is not currently participating in, nor has she already completed, a treatment program or counseling. Therefore, neither the third nor fourth mitigating condition is applicable. *Id.* at ¶ 23(c)–(d).

The Individual has repeatedly consumed large amounts of alcohol in response to grief or sadness in her life. The DOE Psychologist opined at the hearing that the Individual's prognosis would not be "good" without some kind of treatment or a longer period of sobriety. While the Individual's eight-month period of abstinence from alcohol consumption is commendable, it is simply not enough, in the absence of treatment, for me to find that her problematic alcohol use is unlikely to recur. Accordingly, I find that none of the mitigating conditions are applicable, and that the Individual has not 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 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