



Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted ten exhibits, marked Exhibits A1 through C1. The LSO submitted fourteen exhibits, marked Exhibits 1 through 14.<sup>2</sup>

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

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1. Guideline G provides that "[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. Conditions that could raise a security concern include "[a]lcohol-related incidents away from work, such as . . . fighting, child or spouse abuse, . . . or other incidents of concern, regardless of the frequency of the individual's alcohol use . . ." and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder . . ." *Id.* at ¶ 22(a) and (d). The SSC cited the following information. In a March 2023 report, the Psychologist concluded that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition-Text Revision* (DSM-5-TR), criteria for Alcohol Use Disorder (AUD), Moderate, in early remission. Ex. 1 at 5. The Individual was charged with Battery Against a Household Member in October 2022 after consuming a bottle of red wine. *Id.* The Individual reported that a health professional had recommended that he reduce alcohol consumption because it was negatively impacting his health. *Id.* He reported consuming a reduced amount of alcohol of six to seven alcoholic beverages a night on Friday or Saturday and one to two drinks on one to two nights per week on the remaining days. *Id.* Prior to his reduced pattern of consumption, he consumed alcohol at the rate of three to four beverages, two to three nights per weekday, and one to two beverages and a shared bottle of wine over the weekend. *Id.* Lastly, the Individual reported he becomes intoxicated at least once a week. *Id.* The cited information justifies the LSO's invocation of Guideline G.

## 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).

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<sup>2</sup> References to the LSO Exhibits are to the exhibit number and the bates number located in the top, right corner of each exhibit page.

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 or her 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. *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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

The record contains the following information regarding the Individual’s alcohol consumption. The Individual reported that between 2018 and 2019, he consumed three to four alcoholic beverages on two to three work nights per week, and, on Friday and Saturday night, he would consume one to two alcoholic beverages in addition to sharing two to three bottles of red wine with his wife. Ex. 12 at 59. Then, starting in 2021, the Individual reportedly reduced his alcohol consumption because two different health professionals advised him that consuming too much alcohol in combination with his prescription medication could be impacting his “blood work” and “may not be good for [his] health.” Ex. 11 at 46; Ex. 12 at 59 (reporting that his doctor “told [him] to take a break from alcohol” and that a different doctor suggested that he abstain (internal quotations omitted)). He explained that the health risks frightened him, and he immediately reduced his consumption in early 2022 to approximately one to two alcoholic beverages, one to two nights per week, Sunday through Thursday, and six to seven beverages on either Friday or Saturday. Ex. 11 at 46. He reported that he became intoxicated weekly at that time. *Id.* at 47.

Leading up to his arrest in October 2022, he had been consuming one to two alcoholic beverages on two to three nights during the work week and, on the weekend, one to two alcoholic beverages in addition to sharing two to three bottles of red wine with his spouse. Ex. 12 at 59. He reported that he continued to consume alcohol despite the recommendations that he stop because he had never suffered serious consequences from his alcohol use. *Id.* at 60. On the date of his arrest, the Individual consumed a bottle of wine in the early afternoon and later got into an argument with his spouse. Ex. 9 at 32. The argument became physical, which resulted in the Individual being arrested and charged with Battery Against a Household Member.<sup>3</sup> Ex. 10 at 35–36.

During a March 2023 psychological evaluation with the Psychologist, the Individual reported that he and his spouse had a history of alcohol use together, and he was court-ordered to attend marriage counseling with his spouse as a result of his criminal charge. Ex. 12 at 57, 59. The Psychologist opined that the Individual’s history of consumption constituted “excessive drinking” per the National Institute on Alcohol Abuse and Alcoholism because he became legally intoxicated at least five days in a month. *Id.*

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<sup>3</sup> The Individual initially reported the title of his charge as Domestic Battery. Ex. 10 at 35. The distinction is one without a difference for the purpose of this Decision. The charges were dismissed prior to the hearing. Ex. 6 at 22.

The Individual told the Psychologist that he had been abstinent since October 17, 2022. *Id.* He also reported that he stopped using alcohol to avoid the potential negative consequences to his career. *Id.* As a part of the evaluation, the Psychologist ordered a Phosphatidylethanol (PEth) test for the Individual, which can detect “any significant alcohol use over the past three to four weeks.” *Id.* The test result came back negative for alcohol use, which the Psychologist interpreted as substantiating the Individual’s claim of recent abstinence. *Id.* Ultimately, the Psychologist determined that the Individual met the DSM-5-TR diagnostic criteria for AUD, Moderate, in early remission, and recommended that the Individual abstain from alcohol use for at least one year, work with an individual therapist who has “specific experience treating substance use disorders” for the same duration, and be involved with his company’s Employee Assistance Program (EAP) to include monthly PEth testing. *Id.* at 62.

The record includes a recent letter from a clinical psychologist on staff with the Individual’s employer’s EAP, who reported that the Individual had obtained monthly PEth tests starting in July 2023 to evidence sobriety. Ex. B1. Furthermore, the Individual submitted a letter that reported he had completed a five-week EAP alcohol education and group class on January 19, 2023. Ex. B2. The Individual also submitted the negative results from PEth tests taken on June 21, September 6, and October 17, 2023. Ex. A1; Ex. A3; and Ex A4.<sup>4</sup>

At the hearing, the Individual testified that he had continued to remain completely abstinent. Hearing Transcript, OHA Case No. PSH-23-0106 at 17. He explained that he started abstaining because he was required to do so as a result of his arrest; that through abstaining he had time to reflect more seriously on his relationship with alcohol and decided it was no longer compatible with his values; and he realized that he needed to resolve the alcohol-related concerns that resulted in his clearance being suspended. *Id.* The Individual explained that, previously, he believed an alcohol problem meant that there had to be “relationship problems or health problems or professional problems or DUIs or something to that effect,” and he had not experienced those issues until “very recently.” *Id.* at 23. He also acknowledged the health concerns related to his alcohol use and that alcohol negatively affected his marriage leading up to his arrest. *Id.*

He confirmed that he had not attended the Psychologist-recommended counseling. *Id.* at 18. He testified that he prioritized rebuilding the relationship with wife, which included a marriage counseling, and his work commitments. *Id.* at 41–42. The marriage counseling included discussing alcohol use with the counselor, and he and his wife established the mutual expectation that they would abstain from alcohol because it can inflame arguments and impede working through issues. *Id.* He testified that he prioritized marriage counseling and counseling for his mental health; he did not have the “bandwidth” for the Psychologist-recommended individual counseling; and his financial resources were limited. *Id.* at 46. As for why he did not begin taking PEth tests until June 2023 despite reviewing the recommendations in approximately April 2023, he testified that he delayed because he initially considered not going through the administrative review process. *Id.* at 39, 43.

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<sup>4</sup> The exhibits reflect that the Individual attempted a fourth PEth test in July, however, the testing laboratory reported that it mistakenly “processed [the Individual’s] specimen for blood ethanol.” Ex. A2. Therefore, no PEth results were obtained from that sample.

The Individual also testified that learning of the Psychologist's AUD diagnosis was a "wake up call" similar to learning previously that his alcohol consumption may have been negatively impacting his health. *Id.* at 58–60. After reflecting on his conduct during the thirteen months of his reported sobriety, the Individual realized that he had a problem with alcohol.<sup>5</sup> *Id.* at 23–24. He testified that he has benefited from a twelve-week "maintaining changes in substance abuse" class that he had recently started about one month prior to the hearing; there, he observed other people going through similar clearance issues.<sup>6</sup> *Id.* at 27, 29. He described it as a place for student-led discussion, reflection, and planning—such as how to deal with the temptation to consume alcohol. *Id.* at 27–28. He testified that he does not see alcohol as a temptation anymore and that he has successfully attended events where alcohol was served and avoided consumption by thinking about the consequences. *Id.* at 31. He also testified that his family has been supportive of his sobriety, and he believes his friends will also be supportive. *Id.* at 36. The record includes letters from his spouse and in-laws that corroborate his testimony regarding support and sobriety. Ex. B3; Ex. B4; Ex. B5. He testified that he intends to continue abstaining from alcohol. Tr. at 43.

At the hearing, the Psychologist testified that the Individual had not demonstrated reformation with regard to his AUD. *Id.* at 63. The Psychologist initially testified that the Individual did not provide adequate evidence to demonstrate that he had met her recommendation of maintaining abstinence for twelve months. *Id.* at 64. However, she later testified that the Individual's testimony, combined with the PEth tests in the record, were sufficient to find he had been abstinent for the reported period and opined that his AUD was therefore in sustained remission. *Id.* at 64, 67–68. She then testified that the Individual failed to follow her recommendation that he participate in counseling with a provider with substance abuse experience or expertise. *Id.* at 64. The Psychologist explained that the Individual would have obtained "different things out of therapy," but the "biggest piece" would have been "compliance" or demonstrating a willingness to adhere to the recommendations for addressing his alcohol use. *Id.* at 72, 78. By way of example, the Psychologist testified that the Individual, previously, had reduced alcohol consumption when he became concerned by its impact on his health, but the change only lasted briefly. *Id.* at 78. The Psychologist concluded that while the Individual had demonstrated adequate evidence of rehabilitation by abstaining from alcohol for over twelve months, he had not demonstrated reformation. *Id.* at 71, 75. The Psychologist was unable to provide a prognosis or opinion on the likelihood of the Individual consuming alcohol again. *Id.* at 77.

## V. ANALYSIS

### A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

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<sup>5</sup> The Individual clarified that he did not believe that he had a dependency or "drinking" problem. Tr. at 24.

<sup>6</sup> This course was offered through his employer's EAP and administered by the same instructor as his first alcohol awareness course. *Id.* at 25–26.

- (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.

Paragraph 23(b) applies to resolve the Guideline G concerns. First, the evidence demonstrates that the Individual acknowledged his maladaptive alcohol use. At the hearing, he admitted that he had a problem with alcohol and accepted the Psychologist's diagnosis of AUD. His testimony also reflects that he came to the realization over the last year that not only had his alcohol use impacted his health, but it also negatively impacted his marital relationship and his career.

Second, I find that the Individual has taken significant action to overcome his problem. He completed marriage counseling, which improved his relationship with his wife, addressed their alcohol use in the context of their relationship, and resulted in their mutual agreement to refrain from further alcohol consumption. Their agreement and the corroborating letters from his in-laws demonstrate that the Individual has support for his sobriety, that he and his wife are sincere in changing their behavior, and it consequently reduces the likelihood that the Individual will again engage in problematic consumption or an alcohol-fueled incident that could lead to another arrest. He also completed a six-week alcohol education class in January 2023, and he is participating in a twelve-week program to support his sobriety. The latter demonstrates a commitment to continuing positive actions beyond the hearing date. Lastly, and most persuasive, the Individual has remained abstinent for over a year, starting in October 2022. He credibly testified that he stopped consuming alcohol the day after his arrest, and he provided laboratory testing and letters from his in-laws and spouse to support his testimony. Consequently, the Psychologist updated the Individual's diagnosis of AUD from "early remission" to "sustained remission." The evidence in the record therefore demonstrates a significant positive change in the Individual's thinking and a significant change in his actual behavior. I find that the above evidence demonstrates he has adequately addressed his problematic alcohol use and that the behavior is unlikely to recur.

Finally, I find that his established pattern of abstinence has been in accordance with treatment recommendations. In doing so, I first address the Psychologist's testimony that the Individual failed to participate in the recommended individual therapy and did not provide adequate evidence

of reformation. The Psychologist's opinion is based on the view that participating in the therapy would have demonstrated "compliance" or a willingness to adhere to recommendations. However, there is significant evidence in the record of the Individual's willingness and ability to adhere to his new, positive pattern of behavior. He demonstrated abstinence that exceeded the period recommended by the Psychologist, underwent the recommended PEth testing, maintained the agreement he established with his wife during marriage counseling, and is currently participating in a maintenance program. I find that the evidence of his positive progress outweighs the concern presented by the Psychologist's testimony regarding his "compliance." I therefore conclude that the Individual has resolved the Guideline G security concerns.

## **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 Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should be restored.

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

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals