

Ex. 7 at 11. The police also questioned two of the Individual and Spouse's three children.² Ex. 7 at 11. One of the children reported that she had observed her parents arguing and that she had observed the Individual push her mother several times. Ex. 7 at 11. Another child reported that she heard her parents arguing and that the Individual "hit" her mother. Ex. 7 at 11.

The police found the Individual asleep on the steps. Ex. 7 at 11. The police then awakened the Individual and questioned him. Ex. 7 at 11. The police reported that the Individual was "unsteady on his feet when he stood up" and "was slurring his words and had watery, bloodshot eyes." Ex. 7 at 11. The Individual informed the police that he and the Spouse were going through a divorce and had been arguing over money. Ex. 7 at 11. The Individual told the police that "he did not hit, push, or shove" the Spouse. Ex. 7 at 11. The Individual informed the police that he had consumed about six shots of alcohol while at his house. Ex. 7 at 11. The police arrested the Individual and administered a breath alcohol test to him which indicated that his Breath Alcohol Concentration (BAC) was .308 g/210L.

The Individual reported this incident (the Incident) to a Local Security Office (LSO) on November 7, 2022. Ex. 11 at 1. In his report of the Incident to the LSO, the Individual stated he had been "[c]harged with misdemeanor harassment." Ex. 11 at 1. An "Offense/Incident Report" prepared by the police on November 7, 2022, reports that the Individual had been charged with "Domestic Violence" and "Harassment - Strike/Shove/Kick." Ex. 7 at 7.

As a result of the Incident, the Individual's local Department of Human/Social Services (DHSS) "conducted an assessment of child abuse and/or neglect." Ex. 6 at 2. On December 21, 2022, DHSS issued a "Notice of Founded Finding" (NFF) in which it found "[T]he allegation has been confirmed. . . ." Ex. 6 at 2. The NNF further stated that the Individual was "identified as the person responsible for the incident of child abuse or neglect" Ex. 6 at 2.

The LSO subsequently issued a Letter of Interrogatory (LOI) to the Individual. Ex. 12. The Individual submitted his response to this LOI on February 10, 2023. Ex. 12 at 20. In his response, the Individual reported that he had:

pled guilty to a plea deal offered by the district attorney for deferred sentencing which entails mandatory DV education classes that typically last nine months, probation of 18 months with the possibility of termination following completion of DV education classes, and completion of drug/alcohol education classes. Following successful completion of these requirements the charges will be withdrawn, and I can have the court seal the record.

Ex. 12 at 1. The Individual reported that he was placed on probation as a result of his plea deal. Ex. 12 at 2, 4. Under the terms of his probation, he was required to avoid possession or consumption of alcohol. Ex. 12 at 4. When asked to describe the Incident the Individual responded by stating in part:

Later [that] evening, the fighting continued, and at one point I went upstairs into our bedroom. She threatened to call the cops on me if I did not go back downstairs.

² The third child was an infant.

I laughed at the idea of the cops being called, basically daring her to do so, for being in my own bedroom in my own house. She eventually did call the cops on me for not leaving the bedroom. Once she called the cops, I left and went into the garage to watch TV. When I left for downstairs, I shut the baby gate forcefully and it fell over; the baby gate was not properly secured to the wall. When the cops arrived, they woke me up; I had fallen asleep. They asked me what was going on tonight. I explained that we had been arguing over financial stuff on and off throughout the day. The cops asked me if I touched her and [I said] no. The incident was verbal. My wife told the officer I pushed her several times; she also explained that she called so that things did not escalate. She later redacted the pushing statement in front of a judge at my 1st court hearing.³ She told the judge that I touched her with my finger while arguing. The officer separated and interviewed my kids. [One of my children], 6, told the officer that she witnessed me touching or pushing my wife, and [another of my children], 4, told the officer that I hit my wife. At that point, the officer handcuffed me, and I was escorted to his patrol car peacefully. The officer drove me to a local hospital because of my high breathalyzer test result.

Ex. 12 at 1–2. In his response to the LOI, the Individual repeatedly denied striking, kicking, or shoving the Spouse, but admitted to touching the Spouse with his finger while arguing. Ex. 12 at 2. The Individual was unsure of the amount of alcohol he consumed prior to the Incident. Ex. 12 at 2. He admitted he consumed an excessive amount of alcohol and was intoxicated during the Incident. Ex. 12 at 2–3.

The Individual reported that he had begun an Intensive Outpatient Program (IOP) for alcohol treatment on the advice of his criminal defense attorney. Ex. 12 at 3–5, 14. The Individual also reported that he had received group counseling for alcohol issues during the period from November 8, 2022, to November 14, 2022. Ex. 12 at 14. The Individual further reported that he was being treated by a psychologist and a psychiatrist. Ex. 12 at 4. The Individual admitted that he had been charged with “Unlawful Purchase or Possession of Alcoholic Beverage” on October 17, 2003, when he was 20 years old. Ex. 12 at 5. The Individual also admitted that he was arrested and charged with Driving While Intoxicated (DWI) in December 2003. Ex. 12 at 6. The Individual admitted that he had been issued a citation for Underage Possession of Alcohol in August 2004. Ex. 12 at 7. The Individual admitted that he had developed a high tolerance to alcohol during the Covid-19 lockdown. Ex. 12 at 10. The Individual reported that in November 2021, he realized that his alcohol use had become problematic and had abstained from alcohol use from November 8, 2021, to July 22, 2022. Ex. 12 at 11. The Individual further stated: “Between ~07/22 to 11/23, I thought my bad relationship with heavy drinking was over. I thought a balance was manageable for not being strictly sober and consuming alcohol responsibly. This was obviously a mistake in judgement.” Ex. 12 at 11. He reported that his last use of alcohol occurred on January 9, 2023. Ex. 12 at 12. The Individual further admitted that his alcohol use had caused problems with his family and his employer, had negatively affected his health, and that he had experienced withdrawal symptoms. Ex. 12 at 12. The Individual admitted that he has a problem with alcohol. Ex. 12 at 13–14.

³ I believe the Individual meant to say “retracted” instead of “redacted.”

After receiving the Individual's response to the LOI, the LSO requested that he undergo an evaluation by a DOE-contracted psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on April 7, 2023. Ex. 13 at 1. The Psychologist's review of the Individual's treatment records indicated that he had previously been hospitalized for alcohol detoxification from December 8, 2021, to December 14, 2021, and had been taken to a hospital emergency room for treatment of alcohol-induced symptoms in early December 2021. Ex. 13 at 3–4. The treatment records further showed that the Individual's employer required that he undergo a Fitness for Duty Evaluation (FFD) after his hospitalization. Ex. 13 at 4. The treatment records further showed that the Spouse had called the police on at least four occasions when she and the Individual had been arguing. Ex. 13 at 4. The FFD required the Individual to abstain from all alcohol use. Ex. 13 at 4. During the FFD, the Individual was administered four Phosphatidyl ethanol (PEth) tests. On January 12, 2022, the Individual tested positive at 54 ng/nl, and on January 28, 2022, March 7, 2022, and April 21, 2022, the Individual tested negative. The treatment records indicated that the IOP's staff had diagnosed the Individual with Alcohol Use Disorder, Severe (AUD). Ex. 13 at 5. The Individual's IOP was still ongoing at the time of the CI. Ex. 13 at 5. The Individual recognized that he cannot "drink responsibly." Ex. 13 at 7. The Individual also reported that he last used alcohol on January 9, 2023. Ex. 13 at 4.

After considering all the information available to her, the Psychologist issued a report (the Report) on April 15, 2023, in which she concluded that the Individual met the criteria set forth in the Diagnostic and Statistical Manual 5-Text Revision (DSM-5-TR) for Alcohol Use Disorder, Severe (AUD) in Early Remission.⁴ Ex. 13 at 7. The Psychologist further opined that:

[the Individual] is on a good path toward rehabilitation/reformation. He is in an Intensive Outpatient Program which he will complete within one month. Following that, [the Individual] should continue in their Aftercare program, to include at least one group and one individual session per week, augmented by additional AA or other peer-support group meetings once or twice weekly. He should resume PEth testing every four to six weeks, which will buttress his abstinence from alcohol as well as provide objective and scientific evidence of his sobriety. This participation in treatment and support should continue for 12 months, as of the beginning of his IOP on 01/18/2023. [The Individual] should abstain from alcohol for his lifetime.

Ex. 13 at 7.

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 submitted a response to the Notification Letter in which he requested a hearing. The LSO forwarded his response 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 heard testimony from three witnesses: the Individual, the Spouse, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-23-0126 (hereinafter cited

as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15. The Individual submitted 29 exhibits, marked as Exhibits A through ZZ.

Exhibit A is the Individual’s response to the Statement of Security Concerns (SSC) appended to the Notification Letter.

Exhibit AA is an updated version of the Individual’s response to the SSC.

Exhibit B is a copy of the Individual’s response to the LOI that he submitted on February 10, 2023.

Exhibit C is a copy of the Psychologist’s Report discussed above.

Exhibit D is a letter dated July 10, 2023, to Whom It May Concern from the Individual’s probation officer (PO) indicating that the Individual was in compliance with the terms of his probation. The PO indicated that the Individual was “currently enrolled in his Court ordered Domestic Violence treatment and is submitting drug and alcohol tests as required with clean results.” Ex. D at 1.

Exhibit E is a letter dated October 17, 2023, to Whom It May Concern from the Individual’s probation officer (PO) indicating that the Individual was in compliance with the terms of his probation. The PO indicated that the Individual was “currently enrolled in his Court ordered Domestic Violence treatment and is submitting drug and alcohol tests as required with clean results.” Ex. E at 1.

Exhibits F, G, H, I, J, and K are laboratory reports for six PEth tests administered to the Individual on May 5, 2023; June 16, 2023; July 21, 2023, August 25, 2023; September 29, 2023; and October 6, 2023. Each of these tests were negative.

Exhibit L is a letter dated January 25, 2023, to Whom It May Concern from the executive Director of the Individual’s IOP indicating that the Individual had started attending that program.

Exhibit M is a Completion Certificate indicating that the Individual had successfully completed the IOP on May 4, 2023.

Exhibit N is an unaddressed memo, dated July 19, 2023, from the Individual’s treating psychologist. It states that the Individual:

[H]as been receiving treatment related to his arrest, 11/2/22. Treatment has been weekly for one-hour sessions on the dates listed below. Treatment was paused between February to July 2023 due to the patient attending individual therapy while enrolled in a IOP The patient resumed treatment, 7/5/23, when notified of guidance from a psychological evaluation for re-establishing a security clearance with the Department of Energy (DOE)/National Nuclear Security Administration (NNSA).

Ex. N at 1.

Ex. O is essentially the same document as Exhibit N only with the date updated to October 18, 2023.

Ex. OO is similar to Exhibits N and O with additional progress notes by a psychologist who had been treating the Individual in which she states that the Individual has “exhibited remarkable growth and resilience.” Ex. OO at 1.

Ex. P is list of Aftercare weekly meetings that Individual attended from July 25, 2023, through October 17, 2023.

Exhibit Q is an undated letter to Whom It May Concern from a licensed professional counselor (LPC) providing Domestic Violence treatment to the Individual. The letter indicates that the Individual has attended 19 group sessions and one Individual session. Ex. Q at 1. The LPC stated that the Individual “seems to be within compliance as evidenced by his consistent attendance, appears to be taking notes during group, and engagement in small group discussions.” Ex. Q at 1.

Exhibit R is an unsigned, undated, typewritten note from the LPC indicating that she had met individually with the Individual on June 30, 2023, July 21, 2023, and August 21, 2023.

Exhibit S is an undated letter to Whom It May Concern from the LPC in which she stated that the Individual “completed his Domestic Violence groups and appeared to demonstrate the requirements such as accountability, engagement in the group discussions, and increased insight to his own behavioral patterns.” Ex. S at 1.

Exhibits T, V, and W consist of contact information for personal references.

Exhibit U is a personal reference letter, dated July 13, 2023, from the Individual’s manager to Whom It May Concern in which she states that the Individual is an exemplary employee who exhibits outstanding character while in the workplace.

Exhibit X is a copy of the Individual’s “Domestic Violence Personal Change Plan.”

Exhibit Y is a copy of the Individual’s FFD closure letter, dated June 1, 2023, indicating that he had successfully completed the FFD Evaluation process.

Exhibit Z is the Individual’s witness list.

Exhibit ZZ is an updated version of the Individual’s witness list.

II. The Notification Letter and the Associated Security Concerns

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guidelines G (Alcohol Consumption), and J (Criminal Activity) of the Adjudicative Guidelines.

Under Guideline G, the LSO cites the Psychologist's conclusion that the Individual meets the DSM-5-TR's criteria for AUD, Severe, and the Individual's alcohol-related Domestic Violence arrest. 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, fighting, . . . disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder"; and a "diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol disorder." Adjudicative Guidelines at ¶ 22(a) and (d).

Under Guideline J, the LSO cites the Individual's Domestic Violence arrest and the DHSS's conclusion that the Individual was responsible for an incident of child abuse or neglect. These allegations adequately justify the LSO's invocation of Guideline J. The Adjudicative Guidelines state: "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness." Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is "[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Adjudicative Guidelines at ¶ 31(b).

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 Testimony

At the hearing, the Spouse testified that she had not observed the Individual consume alcohol since November 2, 2022. Tr. at 14. She believes that January 9, 2023, is the Individual's sobriety date. Tr. at 17. She testified that the Individual has changed; they are now able to communicate; and he has become a fantastic father. Tr. at 17–18. Their marriage is now strong, and they communicate wonderfully. Tr. at 18. She believes that the Incident would not have happened if the Individual had not been intoxicated. Tr. at 18. She testified that the Individual does not have a history of domestic violence. Tr. at 19. She further testified that she had not observed him acting in a manner that raised concern for the wellbeing or safety of their children, other than the night when the Individual was “yelling in front of them.” Tr. at 19. The Covid lockdown was hard on her relationship with the Individual. Tr. at 21. The Spouse indicated that the Individual is no longer using alcohol. Tr. at 24. Their communication is now improved. Tr. at 24. She reported that when the police had been called to their home on several occasions prior to the Incident, it was because “some people who wanted to see our marriage fail” had called them. Tr. at 25. On November 2, 2022, she noticed that the Individual was intoxicated when they began to argue. Tr. at 29. She testified that she “jumped the gun and called the police” because she was frustrated with the Individual. Tr. at 29. When the Spouse was asked if any physical contact occurred between the Individual and herself during the Incident she testified: “I mean no physical contact. He put his finger on me. That was it. Just like this, very delicately. That was the only contact we had.” Tr. at 30. When she was asked why the Individual was arrested that night she stated: “they told me that the reason why they were taking him in and giving him the domestic violence harassment is for how long we’ve actually been together, is what they told me.” Tr. at 30. She also indicated that the police did not want to leave the Individual at their home because of the level of his alcohol intoxication. Tr. at 30. She thought he was continuing to use alcohol in the weeks after the Incident. Tr. at 31. At some point, the Individual failed a urine screening for alcohol. Tr. at 32. She believes that the therapy and domestic violence classes have “given him the tools to really change and become a better father, better husband.” Tr. at 33. They no longer keep alcohol in their home or socialize in the company of others using alcohol. Tr. at 33–34. The Individual is participating in AA, which he attends online. Tr. at 34, 36. She thinks he has a sponsor. Tr. at 36. She and the Individual are communicating and “have really fixed our marriage.” Tr. at 34. The Individual told her that he is going to permanently abstain from alcohol use. Tr. at 37. She testified that she did not press charges against the Individual and had asked the prosecutor to drop the charges against the Individual. Tr. at 44, 49. She and her children were interviewed by a social worker about the Incident. Tr. at 45. She testified that the Individual never hit her in her face and that he did not push her. Tr. at 48. She stated that she testified in front of a judge that he had not pushed her. Tr. at 48–49. She claimed that she had not told the police that the Individual had pushed her. Tr. at 49.

The Individual testified that he remains committed to his sobriety and remains in compliance with the terms of his probation. Tr. at 55. His last use of alcohol occurred on January 9, 2023. Tr. at 84. He is subject to random ethel glucuronide (EtG) tests. Tr. at 55. He testified that he has never had a positive EtG test while on probation. Tr. at 55. He noted that he has taken seven PEth tests since April 2023 and that each has been negative. Tr. at 57. He completed the IOP in May 2023. Tr. at 57–58. He has been receiving individual counseling. Tr. at 58. He admitted that during the Covid lockdown his drinking had become a problem and needed to be addressed. Tr. at 64. He

voluntarily admitted himself to a detoxification facility in late 2021. Tr. at 64–65. He had developed a tolerance to alcohol and was drinking 15 to 20 shots a day at one point. Tr. at 65. He visited the emergency room in October 2021 for alcohol-induced symptoms. Tr. at 65. He stopped using alcohol after his detoxification but restarted using alcohol in July 2022. Tr. at 67. He testified that, in July 2022, he thought he “could have a moderate relationship with alcohol.” Tr. at 67. He testified that he was able to consume alcohol in moderation until November 2, 2022. Tr. at 68. He claimed that the Spouse’s friends had urged her to call the police every time they had an argument. Tr. at 69. At the time of the Incident, the Spouse had wanted a divorce. Tr. at 69. He testified that the Spouse “told [the police] that I pushed her.” Tr. at 69. He further testified that the police had isolated their children and that one child stated he had hit the Spouse in her face and the other child stated he had pushed the Spouse. Tr. at 69–70. He denied pushing or shoving the Spouse. Tr. at 70. He admitted that the children were present and able to observe the Incident. Tr. at 70. When the Individual was asked if he had touched the Spouse during the Incident, he claimed he “touched her with my finger, like this one time.” Tr. at 70–71. He consumed some alcohol between the Incident and the IOP. Tr. at 72. He tested positive for alcohol on a pretrial drug test. Tr. at 73, 88. He attended the IOP on the advice of counsel. Tr. at 73. He has been attending Aftercare since July 27, 2023, after receiving a copy of the Report. Tr. at 74. He has resumed individual counseling, which he plans to continue “until these matters have been resolved.” Tr. at 78. He began attending AA meetings sporadically after detoxification. Tr. at 79–80. He is not working the Twelve-Steps and does not have an AA sponsor. Tr. at 79. He completed his Domestic Violence classes. Tr. at 81–82. In his Domestic Violence classes, he learned assertive communication skills that help him better manage conflicts with the Spouse. Tr. at 82. The IOP helped the Individual realize that he can’t safely use alcohol in moderation. Tr. at 83. He testified that he realizes the detrimental impact that his alcohol use has had on his life and now wants “nothing to do with it.” Tr. at 83–84. He plans to permanently abstain from alcohol use. Tr. at 84. The Individual identified his Aftercare group as his support network. Tr. at 85–86. He no longer feels the urge to use alcohol. Tr. at 87. He has a relapse prevention program. Tr. at 88.

The Psychologist testified that she had diagnosed the Individual with AUD, Severe, in Early Remission. Tr. at 93. Nothing in the Individual’s treatment records that the Psychologist reviewed indicated that he is a violent man. Tr. at 93. She testified that the Individual has embraced the rehabilitation process and has demonstrated “a definite understanding of what his problems have been and as well as good insight and understanding of – of how to treat – how to keep that issue at bay, which is the underlying commitment to lifelong abstinence.” Tr. at 94. She opined that the steps that the Individual has taken are sufficient to address his AUD, Severe. Tr. at 95–96. She believes that the Individual has taken full responsibility for the Incident. Tr. at 96. She believes that the Individual is rehabilitated from his AUD, Severe, and has a good prognosis. Tr. at 97–98. She opined that alcohol was the causative factor leading to the Incident, noting that the Individual does not have any other history of violence. Tr. at 98. The Psychologist believes that ten months of sobriety and treatment are sufficient to show that the Individual is rehabilitated. Tr. at 98. The Psychologist characterized the Individual’s BAC level at the time of the Incident .3 as a “extremely high, dangerously high” level, noting that at that level, an individual has almost no inhibitions or judgment. Tr. at 100–101.

V. Analysis

A. Guideline G

The Individual has a long history of alcohol problems, dating back to at least 2003-2004, when he had three alcohol-related arrests, continuing through December 2021, when he was hospitalized for alcohol detoxification, and had an emergency room visit for alcohol-induced symptoms, and up through the date of the November 2022 Incident. Moreover, the Individual has a history of relapsing after abstaining from all alcohol use from December 2021 until July 2022. Nevertheless, the Individual has, for the first time, attended an IOP and begun receiving individual counseling and psychiatric treatment. Having completed the IOP, he is now regularly attending Aftercare and appears to have greatly improved his relationship with the Spouse. These factors, along with the Individual's well documented abstinence from alcohol use for the past ten months, and the opinion of the Psychologist that he has been rehabilitated from his AUD, Severe, have led me to conclude that the security concerns arising under Guideline G have been resolved.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G, three of which are present in the instant case. First, 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 has shown that he has abstained from alcohol use for ten months, which is a sufficient period to demonstrate that his AUD has been resolved and that his alcohol consumption is unlikely to recur, especially in light of his PEth testing program, successful completion of the IOP, Aftercare attendance, and the Psychologist's conclusion that he has been rehabilitated. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(a).

Second, the Adjudicative Guidelines 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 AUD and has provided evidence of actions taken to overcome this problem. Moreover, as discussed above, the Individual has demonstrated a clear and established pattern of abstinence from alcohol for the past ten months. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(b).

Third, 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). As noted above, the Individual has successfully completed the IOP, participates in Aftercare, and has demonstrated his abstinence from alcohol use through the submission of negative PEth test results. Accordingly, he has established a pattern of abstinence from alcohol, given that he has

shown that he has been abstaining from alcohol use for ten months. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(d).

I therefore find that the security concerns raised by the LSO under Guideline G have been resolved.

B. Guideline J

The Individual's criminal activity was clearly symptomatic of his AUD. Because the Individual has shown that his recovery from his AUD can be sustained, I am convinced that the risk that the Individual will engage in future criminal activity is minimal.

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns arising under Guideline J, two of which are relevant to the present case. First, an individual may mitigate security concerns under Guideline J if they can show that "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 has shown that the Incident was a consequence of his AUD, Severe, which was a circumstance that is no longer present. Since I have found that the Individual's AUD was the root cause of his alcohol-related criminal activity, I find that his rehabilitation indicates that his criminal activity is unlikely to recur. In the present case, the Individual's successful rehabilitation from his AUD shows that the mitigating condition set forth in ¶ 32(a) is present.

Second, 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, the passage of time without the recurrence of further criminal activity, the Individual's compliance with his probation requirements, and his successful AUD rehabilitation show that the mitigating condition set forth in ¶ 32(d) is present.

I therefore find that the security concerns raised under Guideline J by the Individual's criminal activity have been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guidelines G and J. Accordingly, the Individual has 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 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