



The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of three witnesses and also testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted four exhibits, marked Individual's Exhibits 1 through 4.<sup>2</sup> The LSO submitted fourteen exhibits, marked Exhibits 1 through 14.<sup>3</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 at 5. 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 driving while under the influence, . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[,] and "[h]abitual or binge consumption of alcohol to the point of impaired judgment . . . ." *Id.* at ¶ 22(a) and (c). As a basis for invoking Guideline G, the SSC cited that the Individual had been arrested and charged with DWI in December 2022, and the Psychologist concluded in his April 2023 report that the Individual binge consumed alcohol to the point of impaired judgment. Ex. 1 at 5. 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).

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

---

<sup>2</sup> The Individual's Exhibit 4 has several subparts, lettered a–h.

<sup>3</sup> The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to the DOE exhibits.

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**

On December 30, 2022, the Individual was arrested and charged with DWI. Ex. 9 at 44. After reporting his arrest to the LSO, the Individual was asked to complete the LOI. Ex. 11. In the LOI, he explained that he had consumed several alcoholic beverages at a wedding on the day of the incident. *Id.* at 54. As he was driving home from the wedding, he was stopped by law enforcement after his vehicle was observed swerving on the road. *Id.* While stopped, he underwent a field sobriety test, and law enforcement subsequently arrested him. *Id.* The Individual explained that he had been offered and accepted pre-trial deferment as a result of his arrest. *Id.* at 55. In order to meet the terms of his deferment and have the charges dismissed, the Individual had to, among other things, be on probation for fifteen months, complete a drug and alcohol evaluation and any recommended treatment, attend an alcohol awareness program, and complete community service. *Id.* The Individual further explained in the LOI that, as a result of his arrest, his union advised that he seek out a substance abuse evaluation. *Id.* at 61. He followed that recommendation, and, as result of the evaluation, the Individual was advised to complete an intensive outpatient program (IOP). *Id.* at 62.

The LSO requested that the Individual undergo a psychological evaluation. Ex. 4 at 17. The record contains the Psychologist's report of findings (Report) issued in April 2023. Ex. 12. After reviewing the Individual's Personnel Security File and the information provided during the evaluation, the Psychologist opined that the Individual binge consumed alcohol to the point of impaired judgment and "may border on habitual consumption as well." *Id.* at 74. The Psychologist relied upon the Individual's reported history of consuming six or more alcoholic beverages on a monthly basis and regularly consuming three alcoholic beverages at social events and "after a hard day at work." *Id.* The Individual underwent a Phosphatidylethanol (PEth) test as a part of the evaluation. *Id.* at 72. The results were negative. *Id.* at 73. This corroborated the Individual's report that he had been abstinent. *Id.* The Individual also reported that he was currently participating in the recommended IOP. *Id.* at 72. The Psychologist recommended that to demonstrate rehabilitation or reformation the Individual should complete his eight-week IOP program and participate in a twice-weekly aftercare program and continue random "alcohol testing," including monthly PEth tests, until he had demonstrated twelve months of abstinence. *Id.* at 74.

The record contains certificates provided by the Individual that demonstrate his completion of his court-ordered alcohol awareness class in April 2023 and his IOP in May 2023. Individual (Ind.) Ex. 2; Ind. Ex. 3. The Individual also submitted the results from monthly PEth tests dating from the end of March 2023 until November 2023—the month of the trial. Ind. Ex. 4a–h. All of these test results were negative for alcohol consumption. *Id.*

At the hearing, the Individual testified that he accepted responsibility for his DWI and that he had been abstaining from alcohol since his arrest. Hearing Transcript, OHA Case No. PSH-23-0113 (Tr.) at 37, 39. He also testified that he continued taking PETH tests up to the hearing date after talking to other people who had gone through the administrative review process. *Id.* at 39. The Individual provided detail regarding additional actions he had taken since the night of his arrest, including completing the eight-week IOP and participating in aftercare treatment and individual counseling. *Id.* at 44. The Individual testified that he was initially “disgusted” with himself after reading the Report. *Id.* at 41. He testified that the IOP, aftercare, and individual counseling helped him to accept the opinions and conclusions in the Report. *Id.* at 42. He also acknowledged that he had too many alcoholic beverages in too short a time on the night of the arrest and stated that “it’s just not something that [he] want[s] to do anymore.” *Id.* at 43.

The Individual testified that he enrolled in the IOP in March 2023, and it was a class in an educational setting where he received different counselors’ perspectives on alcohol use and the effects of alcohol use. *Id.* at 43, 65. Upon completion of the IOP, he began attending aftercare two nights a week in a group setting and with a counselor to work on abstinence and relapse prevention. *Id.* at 45–46, 52. He continued attending aftercare up to the hearing date, and he testified that he intends to continue to participate. *Id.* at 47, 52. He testified that he attended aftercare twice a week because he thought “it would be better and more beneficial to get as much of it as [he] could.” *Id.* at 46. Regarding his individual counseling, the Individual enrolled in it because he thought it would be a good idea for one-on-one treatment in addition to the aftercare. *Id.* at 61. He testified that he attended sessions once a month with his counselor in which he discussed his future relationship with alcohol and relapse prevention. *Id.* at 47. His relapse prevention consists of minimizing challenging situations such as being around alcohol, talking to his family or girlfriend if he has a thought about alcohol consumption, and maintaining aftercare attendance. *Id.* at 60. Prior to the above treatment, he “never really realized the . . . potential consequences of [his alcohol consumption].” *Id.* at 55. He regretted his past use and saw his abstinence as setting a good example for his child and beneficial to his career. *Id.* at 48.

The Individual’s counselor testified that he began working with the Individual on January 18, 2023, and he was the person who recommended that the Individual start the IOP. *Id.* at 63. He testified that the Individual “tolerat[ed] the challenges of group therapy pretty well.” *Id.* at 66. The counselor testified that the individual counseling sessions focused on preparing for situations where the Individual is in a social or vacation setting and creating plans for how to adhere to abstinence in those situations. *Id.* at 68. The counselor observed the Individual transition from being uncomfortable and stressed out as a result of his DWI to quickly entering and sustaining “a malleable and positive attitude . . .” *Id.* The counselor testified that the Individual appears to have “developed some peer support relationships in aftercare” and therefore has trusted individuals he can reach out to in addition to his girlfriend and the counselor. *Id.* at 72. The counselor testified that the Individual’s prognosis is positive so long as he continues his sobriety and positive view of treatment. *Id.* at 80.

The Psychologist testified, after listening to the Individual’s testimony, that he observed a change in the Individual’s perspective regarding alcohol consumption from the date of the evaluation, when he was a bit guarded in responding to questioning, to responding openly and honestly without hesitancy at the hearing. *Id.* at 90. The Psychologist also noted that the Individual’s testimony

demonstrated that the Individual has taken ownership of his problem and “matured” as a result of his abstinence and treatment. *Id.* 93–94. At the time of the hearing, the Individual had been abstinent for just under eleven months. *Id.* at 97. The Psychologist opined that if he had observed the Individual continuing to be resistant to answering questions about his alcohol consumption, he would still recommend the full twelve months of abstinence before giving a favorable opinion regarding the Individual’s progress. *Id.* at 94. Instead, the Psychologist testified that the Individual had “done a very good job” and opined that the Individual has a positive prognosis. *Id.* at 94–95. He also opined that the Individual had made “huge advancements in his rehabilitation” and done “just about everything that was asked of him.” *Id.* at 96.

## V. ANALYSIS

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

- (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.

I find that ¶ 23(b), (c), and (d) apply to resolve the Guideline G concerns. Because I rely on the same evidence with regard to each of these factors, I will analyze them together. The record is clear that the Individual acknowledged his maladaptive alcohol use. While he was initially disgusted by the Psychologist’s report, his testimony established that he now accepts responsibility for his problematic consumption both generally and on the night of his arrest. His credible testimony also demonstrates that he accepted and acknowledged the Psychologist’s conclusions in the report, and through his treatment, determined that he no longer wants to consume alcohol. The Individual also provided evidence of the substantial actions taken to overcome his problem. He completed alcohol education and an eight-week IOP, and he continues to follow treatment recommendations by attending an aftercare program and individual counseling. The record is clear that he has changed his perspective regarding alcohol consumption since the night of his arrest in December 2022. Furthermore, he has been abstaining from alcohol since his arrest and has

documented his abstinence by providing the results of monthly PEth testing throughout his treatment, which was a recommendation of the Psychologist. The record also demonstrates that his individual counseling has focused on successful relapse prevention and planning. As a result of his actions, he received a positive prognosis from both his counselor and the Psychologist at the hearing. And there is no evidence in the record that the Individual has previously undergone treatment and relapsed. Accordingly, I find that the Individual is satisfactorily participating in both a counseling and treatment program, has no history of treatment and relapse, and has a clear and established pattern of abstinence in accordance with treatment recommendations. Accordingly, I find that the Individual has resolved the Guideline G 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