

for a psychological evaluation. Ex. 8 at 48. 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 met sufficient diagnostic criteria for a diagnosis of Alcohol Use Disorder (AUD), Severe, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 52.

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. Ex. 1 at 6–8. 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. *Id.* at 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 did not submit any exhibits. The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-24-0004 (Tr.) at 3, 9. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 56.

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 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 DOE Psychologist’s opinion that the Individual habitually or binge consumed alcohol to the point of impaired judgment and her diagnosis of the Individual with AUD, Severe. Ex. 1 at 5. The LSO’s allegations that the Individual habitually or binge consumed alcohol to the point of impaired judgment and was diagnosed with AUD by a duly qualified mental health professional justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(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 March 2007, the Individual was arrested and charged with Driving Under the Influence (DUI) of alcohol. Ex. 10 at 132. The Individual pleaded guilty and was sentenced to 10 days in jail, ordered to pay fines and fees, and had his driver’s license suspended for one year with an ignition interlock device installed on his vehicle for one year following reinstatement of his driver’s license. *Id.* at 133. In December 2009, the Individual was arrested and charged with DUI for the second time. *Id.* The Individual pleaded guilty and was sentenced to four months in jail, ordered to pay fines and fees, required to perform community service, and ordered to attend an alcohol education program. *Id.* at 134. For the second offense, the Individual’s driver’s license was suspended for two years, and an ignition interlock device was installed on his vehicle for two years following reinstatement of his driver’s license. *Id.*

In 2010, the Individual participated in an intensive outpatient program (IOP) for alcohol-related treatment. Ex. 7 at 37. The Individual received approximately nine months of treatment through the IOP. *Id.* According to the Individual, he abstained from alcohol following treatment in the IOP until 2014, when he decided to consume alcohol with his then girlfriend. Ex. 8 at 50.

On March 7, 2023, the Individual asked his manager for the contact information of an individual they had previously discussed who had recovered from alcohol abuse through participation in AA. Ex. 7 at 39. The Individual told his manager that he had been attempting to stop consuming alcohol and had recently resumed attending AA meetings. Ex. 6 at 23. The next day, the Individual’s manager advised the Individual that he was required to report his alcohol-related issues to the LSO. Ex. 7 at 39. The Individual did not want to file a report with the LSO, but did so when the manager advised him that he would “have a better chance at saving his access [authorization]” if he self-reported and that the manager would report the conversation if the Individual did not do so. *Id.*

In his May 7, 2023, response to the LOI, the Individual represented that he “had problems with alcohol in the past” and currently consumed “4 to 5 [beers] on some weekends.” *Id.* at 39–40. The Individual further indicated that his alcohol consumption was lower than it had been when he was arrested for the DUIs and that he did not believe that he needed treatment. *Id.* at 42.

On June 6, 2023, the Individual met with the DOE Psychologist for a clinical interview. Ex. 8 at 48. The Individual represented to the DOE Psychologist that he usually consumed two to three beers “every couple of days,” and that he had consumed one beer the night prior to the clinical interview. *Id.* at 50. The Individual also disclosed that he had a medical condition which could be significantly exacerbated by alcohol consumption. *Id.* at 52.

At the request of the DOE Psychologist, the Individual provided a sample for a Phosphatidylethanol (PEth) test.³ *Id.* at 51. The PEth test was positive at a level of 1,096 ng/mL. *Id.* at 70. According to the medical doctor who interpreted the PEth test results, the Individual's PEth level was "extremely high" and exceeded the mean PEth level of participants in one study who reported consuming an average of 7 alcoholic drinks per day. *Id.*

The DOE Psychologist issued her Report on June 18, 2023. *Id.* at 53. 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, and that he had significantly underreported his alcohol consumption to her in the clinical interview.⁴ *Id.* at 51–52. She further opined that he met sufficient diagnostic criteria for a diagnosis of AUD, Severe, under the *DSM-5* based on meeting eight diagnostic criteria which exceeded the six required for a diagnosis of AUD, Severe. *Id.* at 52, 54. The DOE Psychologist recommended that the Individual demonstrate rehabilitation by attending an inpatient alcohol treatment program of at least 30 days, followed by an IOP of at least eight weeks and nine months of aftercare for a total of 12 months of treatment, with monthly PEth testing. *Id.* at 52. Alternatively, the DOE Psychologist recommended that the Individual could demonstrate reformation by abstaining from alcohol for 24 months with monthly PEth testing to support his abstinence. *Id.*

At the hearing, the Individual testified that he last consumed alcohol on August 18, 2023. Tr. at 11. The Individual testified that when he first discontinued alcohol consumption, he mostly remained in his room at home when not at work due to experiencing withdrawal symptoms and not feeling confident that he could be in public without relapsing. *Id.* at 16, 22–23, 30–31. According to the Individual, he disassociated from persons with whom he used to consume alcohol because he did not believe that he could maintain his sobriety if he continued to socialize with them. *Id.* at 12.

The Individual represented that he began attending AA meetings in early September. *Id.* at 48–49. He does not have an AA sponsor and is not working the 12 steps of the AA program. *Id.* at 44–45.

The Individual claimed that he attended inpatient treatment for alcohol misuse from September 14 to October 11. *Id.* at 21. According to the Individual, the inpatient treatment included multiple daily group sessions led by a counselor, weekly individualized counseling, and holistic treatments focused on "mind healing." *Id.* at 14–15. The inpatient treatment provided alcohol education, and taught participants to recognize triggers and develop coping skills to avoid relapsing. *Id.* at 17. Through treatment, the Individual identified individuals with personalities like his father as a significant trigger that led him to consume alcohol. *Id.* at 17–18. The Individual also learned to

³ 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. 8 at 70–71.

⁴ 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 8 at 55. The DOE Psychologist defined "habitual" alcohol consumption as "approximately monthly intoxication." *Id.*

recognize and describe his emotions and to focus on breathing to avoid being overcome by triggers. *Id.* at 20.

The Individual testified that he is enrolled in a ten-week IOP for alcohol treatment and will attend aftercare following completion of the IOP in mid-January. *Id.* at 13, 23. The Individual indicated that he attends three three-hour group sessions and one individualized counseling session per week through the IOP. *Id.* at 25. The Individual represented that he undergoes alcohol testing through the IOP, and had also entered into a “zero tolerance” agreement with his employer pursuant to which he undergoes monthly PEth testing and will be terminated from his employment if he tests positive for traces of alcohol consumption. *Id.* at 39–40. The Individual’s PEth testing pursuant to the “zero tolerance” agreement began in November. *Id.* at 40. The Individual explained that he did not obtain PEth testing himself as recommended by the DOE Psychologist prior to being required to undergo PEth testing by his employer because he “didn’t know how to go about things.” *Id.* at 50–51.

The Individual indicated that he intends to pursue aftercare and individualized therapy after completing the IOP. *Id.* at 28. He expressed the intention to abstain from alcohol in the future and to no longer be what he characterized as a “dry drunk,” which he represented that he had been in the past when he abstained from alcohol but wanted to drink. *Id.* at 32. The Individual indicated that he was motivated to abstain from alcohol in order to avoid alcohol-related medical events like those he experienced in the past and to preserve his career, and that, unlike prior occasions on which he abstained from alcohol, he truly wants to abstain from alcohol permanently. *Id.* at 34–35, 45–46.

The DOE Psychologist opined that the Individual’s AUD was in early remission based on his self-reported abstinence from alcohol, but that he had not received sufficient treatment or established a sufficiently lengthy period of abstinence from alcohol to demonstrate rehabilitation. *Id.* at 57–60. She further opined that she believed that the Individual had a “fair to good” prognosis based on his appreciation for the complexity of addiction and what she believed to be his sincere desire to maintain sobriety, but that his lengthy period of alcohol abuse and relapse following a five-year period of sobriety prevented her from providing an unequivocally positive prognosis. *Id.* at 61, 63.

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 does not dispute that he engaged in many years of alcohol misuse that caused significant harm to his health, relationships, and professional standing. The Individual's alcohol misuse during this period was neither infrequent nor did it occur under unusual circumstances. The Individual claims to have abstained from alcohol for less than five months as of the date of the hearing, which is not so much time that it outweighs his lengthy history of alcohol misuse. In light of these considerations, I cannot conclude that the passage of time or circumstances under which the Individual previously misused alcohol make his alcohol misuse unlikely to recur, and therefore I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual has acknowledged his pattern of maladaptive alcohol use and claims that he is currently taking action to overcome the problem. However, as of the date of the hearing, he claims to have less than five months of abstinence from alcohol, well short of the 12 months of abstinence from alcohol recommended by the DOE Psychologist. Moreover, the Individual has not documented his claimed abstinence from alcohol through alcohol testing in compliance with treatment recommendations. 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 claims that he is currently undergoing treatment through an IOP. However, he previously relapsed following treatment in an IOP and years of abstinence from alcohol. Moreover, he did not offer documentation of his treatment or testimony from a treatment professional to establish that he is making satisfactory progress. Thus, he has not established the applicability of the third mitigating condition. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual has yet to complete the treatment and aftercare recommended by the DOE Psychologist. *Id.* at ¶ 23(d).

While the Individual represents that he has received treatment that has helped him to take positive steps towards recovery, he has not provided any corroborating evidence to support his claimed abstinence and treatment and does not claim that he has fully complied with the treatment recommendations of the DOE Psychologist. Therefore, 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