

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 5. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 10–32. 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 submitted five exhibits (Exs. A–E). The Individual testified on his own behalf and offered the testimony of his counselor, mother, sister, and aunt. Hearing Transcript, Case No. PSH-24-0007 (Tr.) at 10, 26, 42, 52, 71. The LSO called the DOE Psychologist to testify. *Id.* at 107.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. Guideline G relates to security risks arising from excessive alcohol consumption. “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. In citing Guideline G, the LSO relied upon the DOE Psychologist’s June 2023 diagnosis that the Individual suffered from AUD, moderate. Ex. 1 at 5. It also cited the Individual’s August 2022 alcohol-related charge and his admission that he consumed alcohol to intoxication three to four times a week between September 2020 and January 2021. *Id.*

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 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 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

The Individual was charged with Battery Upon a Peace Officer in August 2022, after consuming four to six beers and a shot of whiskey. Ex. 9 at 134. The Individual admitted his misuse of alcohol. Tr. at 72. In August 2022, he went to a fair, where someone gave him a political sign. *Id.* at 73. A police officer saw him with the sign and thought he had stolen it. *Id.* at 74. The Individual claimed that eventually the police officer believed him, but the Individual proceeded to touch the police officer, after which he was charged with battery. *Id.* In December 2022, the charges were dismissed. *Id.* However, after his arrest, the Individual was on probation and given weekly urine tests, which were always negative. *Id.* at 84.

The Individual testified that he misused alcohol prior to that incident because he had depressive thoughts. *Id.* at 76. He was diagnosed with attention deficit hyperactivity disorder when he was younger and was tested for autism. *Id.* He claimed that his mind was “constantly going” and he used alcohol to get sleep. *Id.* He indicated that when the pandemic began, he was isolated, and began to consume more alcohol in order to “get a good night rest.” *Id.* He started taking prescribed anti-depressants in the beginning of 2021 until August 2022. *Id.* at 80. The Individual asserted that he worked with his doctor to wean himself off the medications. *Id.* at 81. August 5, 2022, was the last day he consumed alcohol. *Id.*

The Individual claimed that he stopped drinking because he let himself down. *Id.* at 82. He testified, that “when the incident happened . . . there was a lot of guilt . . . and I wasn’t proud of myself. . . . I let myself down.” *Id.* He believes he took charge of his life and matured since his arrest. *Id.* at 83. He attends the Employee Assistance Program (EAP) classes. *Id.* at 86. He stopped attending Alcoholics Anonymous (AA) after four months, because he prefers to go to therapy led by professionals that is scenario based. *Id.* at 86–87. The Individual indicated that he no longer associates with his friends with whom he consumed alcohol. *Id.* at 92. He relies on a co-worker, who has been sober for ten years, who helps him stay sober. *Id.* The Individual claimed that he keeps himself busy by working on his truck, watching a funny movie, or taking a ride in his truck. *Id.* at 93. He stated that he has been living with his girlfriend, who does not drink, for about four months and they keep no alcohol in their home. *Id.* at 94. He asserted that he has not struggled with his sobriety and does not have an issue being with people who are consuming alcohol. *Id.* at 95. He stated that he does not ever intend to consume alcohol again. *Id.*

The Individual’s aunt testified that she sees him once or twice a month and speaks with him more frequently by telephone. *Id.* at 27. She did not believe that he had a problem with his alcohol consumption, but she did see him drink. *Id.* at 30–31. She claimed that the arrest was a good learning experience for the Individual and that it scared him. *Id.* at 33. The aunt testified that, to her knowledge, he has not had any alcohol since his arrest. *Id.* at 32. She indicated that she works for the LSO, and her endorsement of her nephew is significant because she is committed to her work and the mission of the LSO. *Id.* at 37.

The Individual's sister testified that she sees him once or twice a week and texts him every day. *Id.* at 42. She had seen him consume alcohol in the past prior to his arrest, but never saw him consume alcohol excessively. *Id.* at 43. His sister claimed that the last time she saw the Individual consume alcohol was in May or June 2022. *Id.* at 44. Like his aunt, his sister claimed that his arrest "shook him to his core" and to her knowledge, he has been abstinent since August 2022. *Id.* at 44, 46. She stated that he has a "strong family unit" and talks to them frequently. *Id.* at 49.

The Individual's mother testified that she talks to him and sees him twice a week. *Id.* at 52–53. She indicated that he began consuming more alcohol because he was struggling with what he was going to do with his life. *Id.* at 55. He was staying with her and began consuming more alcohol, but his level of consumption was never concerning to her. *Id.* His mother indicated that he was struggling because of his lack of a relationship with his father and grandfather. *Id.* at 57. She claimed that he started anti-depression medication, and she saw a decline in him. *Id.* His mother stated that:

when he went on depression meds, I saw a real steep decline in his just overall wellbeing. He was vacant. He just – he didn't respond well to depression meds, in my opinion. I honestly, as weird as it sounds, the minute he got off of them is kind of when [he] was coming back, he had like life in his eyes again.

Id. She asserted that although it is sad that the Individual was arrested because it really devastated him, he will never do anything similar again. *Id.* at 60. His mother testified that she had not seen the Individual consume alcohol since the incident. *Id.* at 61. She stated that there was a family celebration the week before the hearing and, although many people were drinking, the Individual did not consume alcohol. *Id.* at 62. She also stated that he did not consume alcohol at the family Thanksgiving celebration. *Id.* She asserted that he has matured during the past year. *Id.* at 65. She said that he was more open, committed to making changes, and coping better. *Id.* She confirmed that the Individual consulted with his doctor to cease taking the anti-depressants, in late summer 2022. *Id.* at 66.

The Individual's EAP counselor testified that she met him when he started the six-week alcohol awareness and education group class in October 2023. *Id.* at 12. She said that the class is workbook based and includes journaling at home. *Id.* The Individual chose to attend the twelve-week follow-up class entitled "Maintaining Changes," which is specifically focused on alcohol related issues.. *Id.* at 13. The only requirement of the Maintaining Changes class is that the Individual remains abstinent, unlike the six-week class, which does not require abstinence. *Id.* The EAP counselor stated that the Individual has been very open and honest in the group, which allowed the other attendees to be more comfortable. *Id.* at 14. The EAP counselor confirmed the Individual's claim that he likes to go driving to fill his time. *Id.* at 15. She asserted that his mother and aunt are very supportive of him. *Id.* at 15, 16. The EAP counselor testified that the Individual has maintained his sobriety for over a year and that he is proud of his accomplishment. *Id.* at 21. She stated that he has shown honesty and courage in the group. *Id.* at 22. Finally, she stated that she believes that the Individual was honest about his alcohol use and depression issues when he applied for his access authorization. *Id.* at 14.

The DOE Psychologist testified that he evaluated the Individual and administered psychological tests. *Id.* at 111. Following the evaluation, the Individual underwent a phosphatidylethanol (PEth) test,³ which detects any significant alcohol use over the past three to four weeks. Ex. 7 at 71. The DOE Psychologist stated that the PEth test was negative, confirming the Individual's self-report of abstinence during the evaluation. *Id.*; Tr. at 108. He stated that, at the time of the Individual's June 2023 evaluation, he had recommended that the Individual reengage with AA or some other type of recovery group and engage in testing to confirm his abstinence. Tr. at 111. The DOE Psychologist testified that the Individual has tried to comply with his recommendations by engaging with the EAP, which indicates that he is attempting to manage his sobriety and engage in treatment efforts. *Id.* "It's obvious that he has sought out treatment on his own, and that's proactive. I think that's a positive – that's a positive thing, again, that lends well towards his ability to maintain sobriety." *Id.* at 116. He asserted that it would have been "nice" if the Individual had undertaken additional testing, but the DOE Psychologist opined that the testing done while the Individual was on probation, along with the negative PEth test done after the evaluation and the testimony of his family is adequate to show reformation. *Id.* at 113. He opined the Individual was showing adequate evidence of rehabilitation and reformation. *Id.* at 113–14.

The DOE Psychologist testified that the Individual no longer carries the diagnosis of AUD, because he has not met the criteria for the disorder for a period of sixteen months. *Id.* at 119–20. Prior to concluding that the Individual no longer carries the AUD diagnosis, the DOE Psychologist stated that the Individual's prognosis is between fair and good, with the terms poor, fair, and good being the terms he uses to indicate someone's prognosis. *Id.* at 115. He opined that continuing with the twelve-week EAP class would be useful to the Individual maintaining his sobriety and would satisfy the DOE Psychologist's recommendation that the Individual pursue aftercare. *Id.* at 116.. The DOE Psychologist concluded that the Individual's risk of relapse is low. *Id.* at 120.

V. ANALYSIS

Conditions that could mitigate security concerns under Guideline G include:

(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; [and]

(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;

Id. at ¶ 23(b), (c).

The Individual acknowledged his maladaptive alcohol use. In addition, he provided persuasive testimony from his aunt, his sister, and his mother, along with his own testimony, that he has been

³ PEth can only be made when consumed ethyl alcohol reacts with a compound in the red blood cell (RBC) membrane. PEth builds up in the RBC with repeated drinking episodes, and a parallel process slowly eliminates the accumulated PEth (with an elimination half-life of about 6 days). Ex. 7 at 71.

abstinent since August 2022. His relatives all testified that he sees them regularly and that they have not seen him consume any alcohol, even at family functions where alcohol is present. The DOE Psychologist testified that the Individual's negative PEth test after the evaluation, which confirmed his self-report of abstinence, along with the testing required by his probation is adequate to show evidence of his abstinence. Therefore, I find that the Individual has mitigated the Guideline G concern under paragraph (b) of the mitigating factors.

The Individual has completed the six-week EAP class. He has enrolled in the twelve-week Maintaining Changes class. The Individual has no history of treatment prior to August 2022, nor does he have a history of relapse following treatment. His EAP counselor testified that he has been open, honest, attentive, and focused in the group. Finally, the DOE Psychologist testified that the Individual's twelve-week Maintaining Changes program is sufficient to be considered aftercare. Therefore, I find that the Individual has mitigated the Guideline G concern under paragraph (c) of the mitigating factors.

On a final note, the DOE Psychologist asserted that he would no longer diagnose the Individual with AUD, and even if he did still carry the diagnosis, the Individual was rehabilitated and reformed.

Accordingly, I find that two of the mitigating conditions have been satisfied, and that the Individual has 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 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 be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals