

As part of routine procedure to maintain an access authorization, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in June 2022, in which he disclosed his 2019 arrest and DUI charge. Ex. 11 at 29. After completing the QNSP, the Individual participated in an Enhanced Subject Interview (ESI) conducted by an investigator in August 2022. Ex. 12 at 59. During the interview, the Individual answered questions regarding the 2019 incident and his general alcohol consumption. *Id.* at 59-60. In May 2023, the Individual signed and submitted a second LOI. Ex. 7. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in July 2023. Ex. 9. That same month, the DOE Psychologist issued a report (the Report), which indicated that she diagnosed the Individual with Alcohol Use Disorder (AUD), Severe, without adequate evidence of rehabilitation or reformation. *Id.* at 8. The DOE Psychologist opined that the Individual's heavy consumption of alcohol impaired his judgment, and the underreporting of his alcohol consumption raised concerns regarding his reliability and trustworthiness. *Id.*

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual 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 requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of three other witnesses. *See* Transcript of Hearing, Case No. PSH-23-0024 (hereinafter cited as "Tr."). He also submitted six exhibits, marked as Exhibit A through F. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted twelve exhibits marked as Exhibits 1 through 12.

II. Notification Letter and Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. 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 "[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]" *Id.* at ¶ 22(a), (d).

With respect to Guideline G, the LSO alleged that the Individual underwent a psychological evaluation in July 2023, and, that the same month, the DOE Psychologist issued a Report indicating that the Individual met the criteria for “Alcohol Use Disorder, Severe, without adequate evidence of rehabilitation or reformation.” Ex. 1 at 1. The LSO also noted that the Report indicated that the Phosphatidylethanol (PEth) test the Individual took in conjunction with the psychological evaluation “confirm[ed] that he has been heavily consuming alcohol [which] impairs his judgment and raises concerns with his trustworthiness.” *Id.* The LSO further alleged that in August 2019, the Individual was arrested and charged with DUI, and a Breathalyzer test was administered, which registered at 0.16 g/210L BAC. *Id.* Based on the foregoing, the LSO’s invocation of Guideline G is justified.

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 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 at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 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 and Hearing Testimony

As indicated above, the Individual was stopped by law enforcement personnel while operating a motor vehicle in August 2019 and charged with a DUI when he failed a field sobriety test and registered a .16 g/210L Breathalyzer test result at the police station. Ex. 1 at 1; Ex. 9 at 4; Ex. A at 5. In the 2020 LOI, the Individual indicated that preceding his arrest, he and his wife were returning home from an event, and prior to driving, he had consumed three 24-ounce cans of a light beer between 9:00 and 10:45 p.m. Ex. 8 at 1.

After the August 2019 arrest and a no contest plea entered the same month, the Individual was sentenced to one year of probation, which included random alcohol testing, as the Individual was required to remain abstinent from alcohol. Ex. A at 2; Ex. E; Tr. at 14–16, 38. The Individual was also fined \$750 and ordered to complete “a substance use disorder assessment and follow all

recommendations.” Ex. A at 2. The Individual stated in the 2020 LOI and in his testimony at the hearing that all but one of the 25 urine tests that were administered were negative, as the Individual consumed one 16-ounce beer in September 2019.³ Ex. 2 at 3; Tr at 14. He also stated in the 2020 LOI that he underwent a Fitness for Duty (FFD) evaluation in December 2019 and completed a six-week alcohol awareness and education class offered by his employer’s Employee Assistance Program (EAP) in November 2019.⁴ Ex. 8 at 4, 11; Ex. B.

The Individual indicated in the 2020 LOI that although he was abstaining from alcohol to comply with the terms of his probation, he would generally consume between one to three 12 or 16-ounce beers “usually [on] weekends but not every weekend.” Ex. 8 at 8. The Individual denied that his alcohol use had negatively affected his personal or professional life. *Id.* at 10.

During the August 2022 ESI, the Individual indicated that he successfully completed probation in November 2020. Ex. 12 at 60; Tr. at 35. The Individual also told the investigator that prior to his August 2019 arrest, he believed that he had consumed two 16-ounce cans of light beer over the course of 45 minutes while at the event. Ex. 12 at 59. He went on to state that although he stopped at a gas station on the way home, he “did not have anything to drink at the gas station[,]” and he was ultimately stopped by law enforcement as he continued home. *Id.* During the interview, the Individual reported that he failed field sobriety tests, but “never blew in a breathalyzer.” *Id.* Regarding his usual alcohol consumption, the Individual stated that he “drinks [light beer], once or twice on weekends, typically one or two beers per setting [sic].” *Id.* The Individual noted that he “has not made any changes in the amount of frequency of his alcohol use.” *Id.*

In the May 2023 LOI, the Individual stated that prior to his August 2019 arrest, he consumed four to five 24-ounce cans of light beer from 7:00 to 10:30 p.m., the last consumption occurring in a parking lot following the event. Ex. 7 at 13–14. Regarding his current alcohol consumption, the Individual indicated that he consumed alcohol “[e]very so often during weekends, birthdays, holidays and special occasions.” *Id.* at 15. The Individual further stated he did not think he had “a pattern of alcohol consumption,” and he “usually consume[d] alcohol every other month or two.” *Id.* The Individual noted that he did not consume alcohol to the point of intoxication “that often,” and he was last intoxicated during the Superbowl on February 12, 2023, when he consumed “somewhere about [six or seven] cans of [light beer] and two shot[s] of whisky over a [three or four] hour time span.” *Id.* at 16. To become intoxicated, the Individual stated that he would “usually have to consume [six or seven] cans of alcohol” over a three-hour period. *Id.* He stated that he last consumed alcohol in April 2023 when he consumed “about 10 cans of Coors Light beer[] over a 9 hour period.” *Id.* at 15.

³ At the hearing, the Individual testified that his probation officer gave him a warning after he tested positive for alcohol in September 2019. Tr. at 38. When asked if he drank alcohol during the course of his probation outside of the aforementioned incident, the Individual stated that he had not. *Id.*

⁴ The July 2023 Report indicated that the first FFD evaluation occurred in August 2019, and that these meeting continued until December 2019, at which point, his access to the contractor’s facility was restored. Ex. 9 at 4. The Report also indicated that following the Individual’s completion of the EAP alcohol awareness and education classes, the Individual “asked for permission to attend [the classes] again,” and the Individual “also purchased a book online . . . about alcohol, its effects, and ways to decrease one’s intake.” *Id.*

In July 2023, the Individual informed the DOE Psychologist that he consumed “[t]hree 24-ounce cans of [light beer] from 6:30 until ~10:00 p.m., and another 24-ounce can at the gas station where he and his wife met up with their friends again.” Ex. 9 at 4. The DOE Psychologist noted that “[t]he amounts of alcohol [the Individual] has described consuming that night between 7:00 and 10:45 p.m. have varied significantly.”⁵ *Id.* at 3. The Individual further informed the DOE Psychologist that “he did not drink alcohol until after he came home from being discharged from the [the armed services] ~2000,” and that before his August 2019 arrest, “he usually drank on weekends, though not every weekend.” *Id.* at 5. When he would drink alcohol, he would consume approximately one to three 12 or 15-ounce light beers over the span of one hour. *Id.* The Individual told the DOE Psychologist that while he did not consume alcohol while he was on probation, he “resumed drinking about six months after completing probation” in May 2021. *Id.* The DOE Psychologist observed in the Report that “[i]t was difficult for [the Individual] to provide a history that was consistent over his adult life” as it pertained to his alcohol consumption. *Id.* However, the DOE Psychologist noted that the Individual reported that he “drank the most . . . during COVID,” which included drinking “every other day[.]” *Id.* On the weekends, he would consume between six to eight beers on Saturdays, and although he would attempt to abstain from drinking alcohol on Sundays, sometimes he “would finish one and have another right away.” *Id.*

The Report also indicated that in February 2023, the Individual “scheduled an appointment with his physician” as he was experiencing a number of symptoms that caused him physical discomfort. *Id.* at 6. The Individual explained that following various medical tests and procedures, doctors told him to “slow down and eventually stop” drinking alcohol.⁶ *Id.* The Individual told the DOE Psychologist that since receiving this recommendation, he drank “mostly on weekends,” including “a six[] or 12-pack but over a longer period of time such as between 2:00 and 10 [or] 11:00 p.m.” *Id.* The Individual also stated that he switched his beer of choice to one that has a lower alcohol content and contains fewer calories. *Id.* He also stated that he no longer consumes alcohol during the week, and that he was last intoxicated “one week before [the psychological] evaluation when he was at the lake and drank six to eight beers between 5:00 and 10:00 p.m., either 12 or 16-ounce cans.” *Id.* He told the DOE Psychologist that although his alcohol consumption and health concerns remain topics of conversation with his wife, he feels that he is “not getting back to [his] bad habit like during COVID, drinking during the week.” *Id.*

In conjunction with the evaluation, a PEth blood test, which “detects any significant alcohol use over the past three to four weeks,” was performed. *Id.* at 7. A “PEth at great[er] than 200 ng/mL corresponds to ‘heavy consumption’ (at least 4 drinks/day; several days/week).” *Id.* The Individual’s PEth was positive at a level of 553 ng/mL. *Id.* According to the Report, the results revealed that the Individual “consumes alcohol very heavily and frequently,” which is “likely to be regular nearly daily drinking with or without binges.” *Id.* The Report also indicated that the Individual was “substantially underreporting his consumption of alcohol,” which is likely more than “5x the amount he reported.” *Id.*

⁵ The DOE Psychologist also noted that the Individual failed to provide that his Breathalyzer result was .16 g/210L in either of his two LOIs, the June 2022 QNSP, or the August 2022 ESI. *Id.*

⁶ At the hearing, the Individual testified that the examining physician told him that if he does not stop consuming alcohol, “it could affect [his] health” and that he “could slowly start deteriorating.” Tr. at 20.

The DOE Psychologist concluded that the Individual met the diagnostic criteria for AUD, Severe, without adequate evidence of rehabilitation or reformation. *Id.* at 8. The DOE Psychologist reasoned that “[t]his is a diagnosis which is impairing [the Individual]’s judgment (i.e., continuing to drink knowing it is life threatening) and trustworthiness (i.e., significantly underreporting his alcohol intake).” *Id.* The DOE Psychologist stated that for the Individual to show adequate evidence of rehabilitation or reformation, he would need to participate in an intensive outpatient rehabilitation program (IOP) for a minimum of nine hours per week for twelve to sixteen weeks and continue weekly aftercare meetings for twelve months.⁷ *Id.* The Report also indicated that the Individual could alternatively participate in Alcoholics Anonymous (AA) for 24 months, which included “documented attendance of four meetings a week, meeting with a sponsor, and showing evidence of working the 12-Step program.” *Id.* The DOE Psychologist further recommended that the Individual permanently abstain from alcohol and have PEth tests performed every four to six weeks. *Id.*

At the hearing, the Individual confirmed that on the night of the 2019 incident, he was pulled over while driving back home from an event, at which point, law enforcement officers smelled alcohol about his person. *Tr.* at 12–13. The Individual acknowledged that he has provided differing accounts of how much alcohol he consumed on the night of the incident “because [he was not] really sure.” *Id.* at 13. He estimated that he consumed “anywhere along the lines of five to seven 24-ounce cans of beer” over the span of approximately three-and-a-half hours and confirmed that his BAC results registered at .16 g/210L. *Id.* He testified that following his arrest, he “learned [his] lesson” and clarified that the terms of his probation included a substance use assessment that may be conducted through his employer, and completion of a “training and education on the consumption of alcohol.” *Id.* at 14–15. His alcohol consumption decreased as a result of being on probation, as he did not want to “end up” in similar circumstances as those individuals attending the alcohol education course. *Id.* at 16–17. He explained that his alcohol consumption “stayed consistent for a while” following the completion of his probation, but he could not definitely say when his consumption began to increase. *Id.* at 17–18. The Individual also stressed that his alcohol consumption in the days preceding his meeting with the DOE Psychologist was not indicative of his usual alcohol consumption, as he was consuming more alcohol in the context of various celebrations. *Id.* at 18–19.

The Individual testified that pursuant to his doctor’s recommendations, he stopped consuming alcohol in February 2023, but resumed drinking alcohol around May 2023, as he was “influence[d] by] friends.” *Id.* at 20. He expressed that he was surprised that his PEth test results were so high and admitted that he “was drinking pretty heavily.” *Id.* at 21. His alcohol consumption has changed following his meeting with the DOE Psychologist, and now he will “have a few here and there,” and he stated that he consumed alcohol the weekend prior to the hearing. *Id.* He usually consumes “anywhere from four to six” cans of alcohol depending on the size of the can. *Id.* When asked how often he consumes alcohol in the aforementioned amounts, the Individual said that he “slowed down significantly[,]” and that the weekend of January 13 was the first time he had consumed alcohol in 2024. *Id.* at 21–22. He had consumed “a six-pack of 12-ounce cans” of beer. *Id.* at 22. Prior to that, on New Year’s Eve, the Individual consumed four 12-ounce cans of beer. *Id.* at 23.

⁷ The Report also noted that if such an IOP was not available in the Individual’s area, a “four- to six-week program that meets four evenings a week should have the level of treatment intensity found to be effective in treating people with alcohol problems.” *Ex.* 9 at 8.

In later testimony, the Individual testified that he generally consumes six or seven 12-ounce cans of beer, or three to five 24-ounce cans of beer, or five to seven 16-ounce cans of beer over the span of approximately seven hours while watching a football game.⁸ *Id.* at 31–32. He generally avoids consuming alcohol on Sundays, as he does not want to report to work hungover. *Id.* at 32.

The Individual testified that he completed an assessment with a treatment center that offers an IOP, and that he had plans to begin the program at the end of the month. *Id.* at 23–24; Ex. C; Ex. D. Although he had contacted the treatment center in November, he could not schedule an earlier assessment because his schedule could not accommodate the hour-long drive. Tr. at 24. He has not attended any AA meetings. *Id.* at 25–26. He testified that he intends to remain abstinent from alcohol once he starts the IOP. *Id.* at 27, 30. Since his meeting with the DOE Psychologist, he has not submitted to any PEth test. *Id.* at 27–28. When asked about a support system, he testified that he intends to seek out a support system via a local community health program. *Id.* at 44; Ex. F.

At the hearing, the DOE Psychologist testified that based on the results of the PEth test, she concluded that the Individual was underreporting his alcohol consumption. Tr. at 50. She indicated that while the Individual testified that he does not consume “much [alcohol] anymore[,]” he described an episode of binge drinking the weekend prior to the hearing, which caused her some concern. *Id.* at 50–51. Based on the evidence and testimony before her, the DOE Psychologist opined that the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.* at 51–52. She described his prognosis as “fair.” *Id.* at 52.

V. Analysis

The Adjudicative Guidelines provide that 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; 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.

⁸ He indicated that this general pattern of consumption began in 2020, “when COVID started.” *Id.* at 33. However, as noted above, he testified that he did not consume alcohol during the course of his probation, save for one incident of consumption in September 2019. Ex. 2 at 3; Tr at 14.

Adjudicative Guidelines at ¶ 23.

I cannot conclude that the Individual has mitigated the Guideline G concerns as stated in the SSC. As an initial matter, the DOE Psychologist recommended that the Individual abstain from alcohol permanently. The Individual, however, testified that, depending on can size, he still drinks between six or seven 12-ounce cans of beer, or three to five 24-ounce cans of beer, or five to seven 16-ounce cans of beer in a week. Tr. at 31–32. This includes drinking a “six-pack” of beer the weekend before the hearing. *Id.* at 22. Regarding the 2019 DUI charge, as stated previously, the Individual continues to consume alcohol and the DOE Psychologist opined in her testimony that he has not shown adequate evidence of rehabilitation or reformation. Therefore, I have no evidence before me to indicate that the Individual’s problematic alcohol consumption was infrequent or that the Individual’s alcohol-related criminal charge happened under such unusual circumstances to suggest that the stated concerns are unlikely to recur or do not cast doubt on his current reliability, trustworthiness, or judgment. Accordingly, I cannot conclude that the Individual mitigated the stated concerns pursuant to the mitigating factor at ¶ 23(a).

Although it appears that the Individual has acknowledged his pattern of alcohol abuse and adverse effects that it has had on his health, he has generally been unwilling to change his drinking habits. The Individual acknowledged that even after experiencing health concerns and receiving medical advice indicating that he should abstain from alcohol, he began drinking alcohol again. This is evidenced by the Individual’s July 2023 PEth test result of 533 ng/mL, which is more than double the amount corresponding to “heavy consumption.” Ex. 9 at 7. And despite receiving the DOE Psychologist’s Report, which recommended permanent abstinence, the Individual has continued to consume alcohol, including as recently as the weekend before the hearing. I have no evidence before me to indicate that the Individual has taken actions to overcome his problem or has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. Therefore, I cannot conclude that the Individual mitigated the stated concerns pursuant to the mitigating factor at ¶ 23(b).

To show adequate evidence of rehabilitation or reformation, the DOE Psychologist recommended that the Individual participate in a 12-to-16-week IOP with an additional year of weekly aftercare meetings. As an alternative to such a program, the DOE Psychologist stated that the Individual could participate in AA for 24 months. Although the Individual stated his intent during the hearing to participate in an IOP, I have no evidence before me indicating that the Individual enrolled in and completed any treatment program. Further, although the Individual completed the EAP alcohol awareness and education class a few years ago and testified that he remained abstinent, save for one incident, during his probation, he resumed consuming alcohol at levels that constitute “heavy consumption.” Therefore, I cannot conclude that he has mitigated the Guideline G concerns as stated in the SSC pursuant to mitigating factors ¶ 23(c) or (d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both 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 SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find 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.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals