

to intoxication a year and a half prior, when he split an 18-pack of beer while watching football games. *Id.* at 2–3. Because of security concerns identified in the Individual’s LOI responses, the LSO referred the Individual for a psychological evaluation. Ex. 9.

In December 2023, the Individual underwent an evaluation by a DOE consultant psychologist (DOE Psychologist), who issued a report of his findings (the Report). Ex. 9. As a part of his evaluation, the Individual underwent alcohol testing. *Id.* at 12, 18. Based on his evaluation and his review of the results of the Individual’s alcohol testing,³ the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, without adequate evidence of rehabilitation or reformation. *Id.* at 15.

Due to the unresolved security concerns related to the Individual’s alcohol consumption, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 5 at 1–3. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Adjudicative Guidelines. *Id.* at 4–7.

In March 2024, the Individual requested an administrative hearing, and the LSO forwarded the Individual’s request 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 took testimony from four witnesses: the Individual, his wife, the Individual’s Counselor, and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-24-0088 (Tr.). Counsel for the DOE submitted 12 exhibits, marked as Exhibits 1 through 12. The Individual submitted one exhibit, marked as Exhibit A.

II. The Summary of 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. The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 5 at 4–6.

A. Guideline G (Alcohol Consumption)

Under Guideline G of the Adjudicative Guidelines, “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. Conditions that could raise a security concern under Guideline G include: “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition” and a “diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.” *Id.* at ¶ 22(b) and (d).

³ After his psychological evaluation, the Individual was administered Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) tests. Ex. 5 at 4.

In citing Guideline G, the LSO relied upon information regarding the Individual's alcohol consumption provided by the DOE Psychologist. Ex. 5 at 4–5. The LSO cited the opinion of DOE Psychologist that the Individual has Alcohol Use Disorder, “with no evidence of rehabilitation or reformation.” *Id.* at 4. The LSO also relied upon the Individual's positive Ethyl Glucuronide (EtG) test, at a level of 47,196 ng/mL, and the Individual's positive Phosphatidylethanol (PEth) test, at a level of 696 ng/mL, as evidence of heavy alcohol consumption. *Id.* The LSO further relied upon the DOE Psychologist's opinion that to show rehabilitation or reformation, the Individual should “detoxify from alcohol under medical management, abstain from alcohol for over 12 months, and complete an outpatient alcohol rehabilitation program, along with the program's aftercare services, such as Alcoholics Anonymous (AA).” *Id.* at 4–5. Finally, the LSO relied upon the “alcohol-related observations” reported in the August 2023, PSIR. *Id.* at 5–6.

B. Guideline E (Personal Conduct)

Under Guideline E, “[c]onduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. Conditions that could raise a security concern under Guideline E include: “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.” *Id.* at ¶ 16(b).

In citing Guideline E, the LSO indicated that the Individual provided the following “false or misleading information to an employer, security official, and/or mental health professional involved in making a recommendation relevant to a national security eligibility determination”:

1. On December 4, 2023, the DOE Psychologist evaluated [the Individual]. In his report dated December 18, 2023, [the DOE Psychologist] concluded that [the Individual's] self-report of his alcohol consumption was not consistent with his laboratory results, which are indicative of heavy alcohol use. [The DOE Psychologist] opined that [the Individual] either unintentionally underestimated and/or intentionally minimized the amount and frequency of alcohol that he consumes;
 - a. During the evaluation, [the Individual] reported that he drank two (2) beers the day before his laboratory testing, however, the EtG results are indicative of heavy drinking within the previous two (2) days, or light drinking the day of the test;
 - b. During the evaluation, [the Individual] reported that he has only consumed two (2) beers per week for the last four (4) months, however, the PEth results suggest that [the Individual] is consuming approximately six (6) drinks a day or had several large binges over the previous three (3) weeks.

2. In his November 2023 LOI, [the Individual] noted he was last intoxicated a year and a half prior when he split an 18-pack of beer while watching football games. However, he also reported he consumes enough alcohol to register over the legal limit three (3) times monthly.

Ex. 5 at 6–7. Considering the information cited by the LSO, I find the LSO properly invoked Guidelines G and E.

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 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

In the August 2023, PSIR, the Individual’s supervisor reported that in March 2023, he called the Individual, while the Individual was on leave, and asked him to meet him off-site to assist with a security issue involving a fellow servicemember. Ex. 11 at 3. Upon meeting the Individual, the Individual’s supervisor observed that the Individual’s “pupils were dilated, his speech was slower than usual, he was more combative [than] usual, and his breath smelled of alcohol.” *Id.* The supervisor also reported that when he later questioned the Individual about his condition, the Individual admitted he consumed alcohol earlier that day, “but stopped several hours before” he received the call. *Id.*

When questioned about the March 2023 incident in the LOI, the Individual reported that before the incident, he received a call from his supervisor around midnight. Ex. 10 at 1. At that time, he “performed an assessment of alcohol consumed vs. hours after [his] last drink and evaluated [he] was within legal limits to drive.” *Id.* The Individual also reported that he attributed his “emotional reaction” at the time he was called to respond to the security issue to “relationship issues with his

wife,” and his “general frustration with being tired.” *Id.* The Individual reported that although he had consumed alcohol, he felt he was “safe to respond, within legal limits, and performed [his] duties satisfactorily.” *Id.*

The PSIR also indicates that another source reported that in April 2023, the Individual drove to a medical office, where the source’s wife works as a “medical professional,” and asked the source’s wife to treat an injury he suffered. Ex. 11 at 3. The source also observed that the Individual:

made inappropriate and unwelcome suggestions to [his wife], and then resisted leaving her place of employment when she told him to leave while exhibiting symptoms of intoxication in her judgment. [The Individual] rejected offers from [the source and his] wife to transport him.

Id.

In the LOI, the Individual reported that he felt “hurt” from the source’s interpretation of his behavior in April 2023 because he did not think it “provided the complete perspective, was not factual, and the situation was never discussed with [him] by involved individuals who were friends.” Ex. 10 at 11. The Individual also reported that before the incident, he “had two alcoholic beverages (12 oz beers) while smoking food over a six-hour period earlier in the day.” *Id.* at 12.

The PSIR indicates that in July 2023, the Individual’s supervisor and three other sources, observed the Individual inform his supervisor that he intended to end his military career because he did not believe his supervisor respected him. Ex. 11 at 3. The sources reported that during this interaction, they “judged that [the Individual] sounded intoxicated” because he had “slower/slurred speech,” and was “incapable of rational conversation.” *Id.* The PSIR also indicates that when the Individual’s supervisor later questioned the Individual about his behavior, he “denied that alcohol substantially affected his behavior” and “stated that ongoing, long-term issues with his wife affected his state of mind” during the interaction. *Id.*

In the LOI, the Individual reported that at the time of the July 2023, incident, he was frustrated with his supervisor and “reacted negatively when [he] was not kept informed of initial actions taken to address personnel issues.” Ex. 10 at 2. The Individual also reported that since the July 2023, event, he has “apologized several times and taken meaningful actions with [his] boss to ensure a similar occurrence does not happen again.” *Id.* The Individual also reported that his behavior in July 2023 was based on thinking he could “openly vent” to people he trusted, and “[n]o alcohol was involved.” *Id.*

Regarding his alcohol consumption, the Individual reported in the LOI that he started consuming alcohol at age 21. Ex. 10 at 2. He also reported that he only drinks on Sundays, while watching football games, and typically consumes “either two 12 oz. beers or two 6 oz. glasses of wine with dinner, or when watching a sporting event.” *Id.* He also reported that it takes “6-8 beers or 3-4 glasses of wine” for him to become intoxicated, and he last drank to intoxication one-and-a-half years ago, when he and a family member split an 18-pack of beers over a three-hour period. *Id.* at 3. He also reported that he “consume[s] enough alcohol to register over the legal limit of .08” “[m]aybe, three times monthly, but only when not driving.” *Id.* at 2. The Individual also reported

that he did not believe he had a substance abuse problem that was affecting him professionally or personally, but “these actions have made it clear that I needed to take personal actions to address how I am handling stress and/or how my internalizing stress is affecting others.” *Id.* at 4. In November 2023, the Individual enrolled in “life stress management counseling” through his employer’s Employee Assistance Program (EAP). Ex. 10 at 2; Ex. 3 at 3.

During his December 2023 psychological evaluation, the Individual reported that the last time he was intoxicated was a year and a half prior, when he consumed six 12-ounce beers, while watching football over a three-hour period. Ex. 9 at 11. The Individual also reported that for the past four months, he had limited the amount and frequency of alcohol he consumed to “two drinks a week, often when watching football on Sunday.” *Id.* at 10–11. He reported he changed his alcohol consumption because of his wife’s “hypersensitivity” toward his alcohol use and her preference that there be no alcohol in the home. *Id.* at 11. He also reported that reducing his alcohol consumption had decreased his wife’s stress and improved their marital relationship. *Id.* He stated that the last time he consumed alcohol was the day before his assessment, on December 3, 2023, when he consumed two beers while watching football. *Id.* at 12.

As part of the psychological evaluation, the DOE Psychologist had the Individual undergo two laboratory tests: an EtG test and a PEth test.⁴ *Id.* at 12. The results of the Individual’s EtG test were positive at a level of 47,196 ng/mL,⁵ which the DOE Psychologist opined was indicative of “heavy alcohol consumption within 96 hours prior to his labs and/or light drinking the day of the test.” *Id.* The results of the Individual’s PEth test were positive at a level of 696 ng/mL, which the DOE Psychologist opined, indicates the Individual “consumed significant amounts of alcohol over the three prior weeks (e.g. 6 drinks a day or several large binges).” *Id.* The DOE Psychologist diagnosed the Individual with an Alcohol Use Disorder, without adequate evidence of rehabilitation or reformation. *Id.* at 15. The DOE Psychologist also opined that based on the results of the Individual’s alcohol tests, the Individual “either unintentionally underestimated or intentionally minimized the amount and frequency of alcohol that he consumes.” *Id.*

The DOE Psychologist recommended that to show adequate evidence of rehabilitation or reformation the Individual enter and complete an outpatient alcohol rehabilitation program and complete the program’s discharge recommendations. *Id.* at 15. The DOE Psychologist also recommended the Individual seek treatment at the American Society of Addiction Medicine (ASAM) Level 1, which consists of individual and group counseling over 8–15 weeks, or Level 2.1 care, which consists of individual and group counseling, 9–20 hours of weekly treatment, 3–5 days a week, for 8–20 weeks. *Id.* In addition, the DOE Psychologist recommended the Individual enroll in an aftercare program, such as AA, and undergo PEth testing every two months, for 12 months, to demonstrate abstinence from alcohol. *Id.*

⁴ The DOE Psychologist testified that an EtG is a “biomarker” for alcohol that is analyzed through one’s urine, and the test can detect alcohol use “in the last 48 to 96 hours for an individual.” Tr. at 145. He also explained that a PEth test is a blood test that detects alcohol use “over the last two to four weeks.” *Id.*

⁵ In the Report, the DOE Psychologist explained that the cutoff for a positive EtG result is 250 ng/mL, but “forensic professionals recommend using 500 ng/mL as a positive result for alcohol consumption,” and guidance from the Substance Abuse and Mental Health Services Administration (SAMHSA) indicates EtG results “higher than 1,000 ng/mL are considered a ‘high’ positive and are indicative of heavy drinking within the previous two days or light drinking the same day of the test.” Ex. 9 at 12.

In his request for a hearing, the Individual wrote that his lack of transparency was due to his “alcohol dependence and mental health issues,” and he wrote that he enrolled in an outpatient alcohol rehabilitation program, during which he attended weekly individual counseling sessions, and underwent bi-weekly urine testing. Ex. 3 at 3–4. With his request for a hearing, the Individual submitted a March 20, 2024, letter from the outpatient alcohol rehabilitation program, which indicated he underwent seven bi-weekly urine tests that produced negative results. *Id.* The Individual also reported that during his counseling sessions, he was diagnosed with “alcohol dependence, anxiety, and depression.” *Id.* at 4. He also reported he had not consumed alcohol since February 11, 2024. *Id.*

During the hearing, the Individual’s wife testified that she has known the Individual for over 20 years, and she has been married to the Individual for 16 years. Tr. at 13–14. She stated she and the Individual have lived together the entire period of their marriage. *Id.* at 14–15. As for the Individual’s alcohol consumption, she stated the Individual used alcohol to help him sleep at night. *Id.* at 15. She stated she was aware of the alcohol-related incidents detailed in the PSIR and that she noticed the Individual’s stress level increased between March and July of 2023, but the Individual did not talk to her about his experiences at work. *Id.* at 19–20. As for the Individual’s alcohol treatment, she stated she knew the Individual was receiving counseling at the outpatient alcohol rehabilitation program, and she knew the Individual underwent alcohol testing as a part of the program. *Id.* at 56–57. She stated the Individual’s last drink was in February 2024, and they no longer keep alcohol in the home. *Id.* at 62–63. She also stated that since the Individual has stopped drinking, he has lost weight, and their relationship has improved. *Id.* at 63–64.

The Individual’s Counselor testified that, beginning in February 2024, she provided weekly counseling sessions to the Individual during his treatment at the outpatient alcohol rehabilitation program. Tr. at 23–24. She stated the Individual’s counseling sessions were educational and included discussing the meaning of addiction and understanding denial. *Id.* at 24. She also testified that the Individual “came from a position of denial about his Alcohol Use Disorder, which is expected; not realizing the extent of his use and the impact that it had,” but he later came to understand that he had an alcohol problem. *Id.* at 29–30. She continued that “it is pretty normal for a person to not be aware and, therefore, be in denial, not be aware of the extent of a problem.” *Id.* at 30. She also stated she did not review the DOE Psychologist’s Report. *Id.* at 31. At the time of the hearing, the Individual was scheduled to complete the outpatient alcohol rehabilitation program on May 20, 2024. Tr. at 117, 159.

The Individual’s Counselor further testified that after performing an assessment of the Individual at the start of the program, the outpatient alcohol rehabilitation program diagnosed the Individual with Alcohol Use Disorder, Mild. *Id.* at 31–32. She stated that, using the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)*, criteria, and the Individual’s counseling and testing with her program as a benchmark, the Individual would qualify for a diagnosis of Alcohol Use Disorder, in “early remission,” on May 20, 2024. *Id.* at 32–33, 37. She explained that the DSM-5 requires three months of abstinence to start remission, and she defines full remission as 12 months of abstinence. *Id.* at 37. She stated the Individual “came in at the outpatient level. So, there would not be any expectation of further drug and alcohol treatment.” *Id.* at 33–34. She recommended the Individual continue seeking care with his employer’s EAP to improve his

coping. *Id.* at 34–35. She stated that after having received three months of treatment, the Individual’s prognosis is good, if he continues treatment with his EAP. *Id.* at 36. She also opined that if the Individual wishes to maintain his abstinence, he should get involved in “support activities,” where he is around sober people. *Id.* at 36. She also explained that after three to five months of abstinence, there is a risk of relapse because people “think they have everything under control,” and they are “more likely to put themselves in situations where they could relapse.” *Id.* at 38–39. She concluded the Individual is fully aware of her concerns with his risk of relapse and she has cautioned him in this area. *Id.* at 39.

The Individual testified that before the April 2023 incident, he would consume a couple of beers a day and would drink socially. *Id.* at 89. He explained that in April 2023, when he got a new supervisor at work, his level of stress increased, and he increased his alcohol consumption to manage his stress. *Id.* at 80–83, 85. He stated that approximately six months before his December 2023 psychological evaluation he typically consumed, on average, four to five alcoholic beverages during the week, and approximately eight alcoholic beverages a day, during weekends. *Id.* at 76, 135. The Individual acknowledged that during his psychological evaluation, he was not truthful with the DOE Psychologist because he minimized his alcohol consumption. *Id.* at 43, 78–79. He continued that he told the DOE Psychologist that he did not believe he had a problem with alcohol. *Id.* at 78–79, 98–99. The Individual stated that he believed he had a problem managing stress, so in November 2023, he enrolled in “stress management” counseling through his employer’s EAP. *Id.* at 99–100. He stated his alcohol consumption didn’t change as a result of this counseling because the counseling “wasn’t working on the real problem that [he] had, which was the alcohol.” *Id.* at 101. He stated that after he enrolled in the outpatient alcohol rehabilitation program, and met with the Counselor, he realized he had a problem with alcohol. *Id.* at 104. The Individual stated that since he started therapy, he has found the benefits of being open and honest about his problem. *Id.* at 117. The Individual submitted documentary evidence he underwent blood testing in March 2024, April 2024, and May 2024, all of which showed negative results for alcohol. Ex. 3 at 11; Ex. A at 1–4.

The Individual further testified that to meet the DOE Psychologist’s treatment recommendations, he will continue to abstain from alcohol for one year and continue some form of counseling for the rest of his life. *Id.* at 118–20. He stated that staff at the outpatient rehabilitation program will provide him with resources he can use to obtain additional alcohol treatment at the end of their program. *Id.* at 118. He also stated he has support mechanisms in place to help him maintain his sobriety. *Id.* at 130. The Individual continued that he has reassessed his personal values, that he will lean heavier on home and family for support, and that he now takes more pride out of being a good father and husband, not just being the best soldier. *Id.* at 130. He stated he is going to continue the stress management counseling through his employer’s EAP. *Id.* at 118.

The DOE Psychologist testified that after he evaluated the Individual, the Individual underwent EtG and PEth testing. *Id.* at 144–45. He stated that he believed the Individual minimized the level of alcohol he consumed because the results of his laboratory tests reflected a much higher use of alcohol than the Individual reported.⁶ Tr. at 147–48. However, he explained that “[m]inimization

⁶ As to the interpretation of the Individual’s test results, the DOE Psychologist testified that he is “not a pathologist,” and he typically relies upon “journal studies [and] scientific studies that sort of give you a range of the amount of

[of one's alcohol use], denial, [and] putting the blame on other people for actions is very common, very consistent with alcohol use disorder." *Id.* at 150. The DOE Psychologist acknowledged that it is possible that someone with Alcohol Use Disorder can believe they consumed less alcohol than they actually did, even though, theoretically, they should be aware of their own behavior. *Id.* at 151, 153.

The DOE Psychologist further testified that based on the testimony the Individual provided during the hearing, the Individual either is, or will soon be, in early remission from his Alcohol Use Disorder. *Id.* at 160. He asserted the Individual will not be in "sustained remission" from his diagnosis until he has abstained from alcohol for 12 months. *Id.* He continued that until the Individual has been in "sustained remission," he is at a high risk of relapse. *Id.* at 160–61. He stated that, just as the Individual's Counselor explained, people are, initially, able to limit their alcohol consumption, but then they "get confident," and exceed those limits. *Id.* at 162. He also stated that the Individual's acceptance of responsibility for his behavior is a "positive sign" toward his recovery from Alcohol Use Disorder. *Id.* at 164. He recommended that the Individual continue some form of treatment and that his treatment include a mechanism to validate his abstinence from alcohol during that time. *Id.* at 161.

V. Analysis

A. Guideline G

An individual may be able to mitigate security concerns under Guideline G though the following conditions:

- 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol 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.

alcohol use" reflected in the laboratory results. Tr. at 167–68. As to the PEth test specifically, the DOE Psychologist testified he was not familiar with the test, and he needed "some assistance" in understanding and interpreting the Individual's test results. *Id.* at 170. He also discussed the Individual's test results with a peer, who is a psychologist also and has consulted with DOE in the past but has a "heavy biology background." *Id.* at 167–68, 170.

Adjudicative Guidelines at ¶ 23.

None of the mitigating conditions under Guideline G have been met by the Individual in this case. Regarding the first mitigating factor, the Individual testified he typically consumed alcohol while watching sporting events, but he increased his alcohol consumption in April 2023 to manage stress at his job and to help him sleep. Further, although the Individual testified that his increased alcohol consumption was due to his work stress caused by a new supervisor, that stress has not been alleviated because he is in the same job with the same supervisor, and therefore the circumstances that led to his increased consumption have not been resolved. The Individual was diagnosed with Alcohol Use Disorder in December 2023, five months before the hearing, and the Individual admitted to consuming alcohol as recently as February 2024, three months before the hearing. This was not so long ago that the behavior is unlikely to recur or does not cast doubt on the Individual's current reliability, trustworthiness, or judgment. Similarly, the Individual has not met the second, third, or fourth mitigating factors. The Individual acknowledged his maladaptive alcohol use only in February 2024. Since being diagnosed with Alcohol Use Disorder, the Individual has taken steps to overcome his Alcohol Use Disorder, but as of the hearing, he has not received enough treatment to resolve his disorder. He successfully completed six months of stress management counseling via his employer's EAP, he was expected to complete his outpatient alcohol treatment program a few weeks after the hearing, and he submitted documentation of laboratory testing to support that he has abstained from alcohol since February 2024. However, the Individual has not enrolled in an aftercare program to continue treatment of his Alcohol Use Disorder, and the Individual has only been abstinent from alcohol for three months, which is insufficient to demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. Finally, both the Individual's Counselor and the DOE Psychologist testified that the Individual is not yet in full remission from his AUD and is at significant risk of relapse without continuing treatment. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline E

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline E:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

After considering the evidence, I find that none of the mitigating conditions under Guideline E have been met by the Individual in this case.

As an initial matter, regarding the Individual's laboratory results, the DOE Psychologist testified that he is not a medical doctor, and there is nothing in the record to support that he is qualified to interpret the Individual's laboratory results. The DOE Psychologist has no training in the analysis of the PEth test results. His claim that he consulted with a peer, who is also a psychologist, and relied on journal studies and scientific studies that are not a part of the record does not afford me with any opportunity to explore the basis for his interpretation. *See, e.g., Personnel Security Hearing, OHA Case No. PSH-24-0055 at 11 (2024)* (stating that, similarly, the Administrative Judge could not accept the DOE psychologist's interpretation of the Individual's laboratory results because there was nothing in the record indicating the psychologist was qualified to interpret such results). Therefore, I cannot give much weight to the opinion of the DOE Psychologist, regarding the Individual's level of alcohol consumption indicated by the test results.

As to mitigating factors (a) and (b), the Individual misrepresented the level of his alcohol consumption during his evaluation and did not correct that information prior to being confronted with his PEth test results. Also, there is also no evidence the Individual's underreporting of his alcohol consumption was caused, or significantly contributed to by, the advice of legal counsel or a similar professional. Therefore, I find these mitigating conditions are not applicable in this case.

As to factor (c), although there is no evidence the Individual's underreporting of his alcohol consumption was a frequent occurrence, his underreporting of his alcohol consumption to the DOE Psychologist occurred five months before the hearing, and not enough time has passed to conclude it no longer casts doubt on his current reliability, trustworthiness, or judgment. Therefore, I find the Individual has not mitigated the security concerns under ¶ 17(c).

As to factor (d), since being diagnosed with Alcohol Use Disorder, the Individual has acknowledged that he deliberately minimized his level of alcohol consumption to the DOE Psychologist because he believed his issues stemmed from his inability to manage stressors at work, and not from his increased alcohol consumption. As indicated by both the Individual's Counselor and the DOE Psychologist, underreporting of alcohol consumption is not uncommon among those who suffer from Alcohol Use Disorder. Although the Individual had completed three months of treatment at the time of the hearing, he has not yet resolved his Alcohol Use Disorder and remains at risk of relapse. As a result, I cannot find that the Individual's deliberate underreporting of his alcohol consumption is not likely to recur or no longer casts doubt on his reliability, trustworthiness, and judgment. Therefore, I find the Individual has not mitigated the security concerns under ¶ 17(d).

As to factor (e), the LSO did not allege that the Individual had engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. As to factor (f), there is no allegation that the information used to form the basis of the security concerns, came from a source of questionable reliability. As for factor (g), the security concerns raised by the LSO do not involve an allegation the Individual was associated with anyone involved in criminal activities. Therefore, these remaining mitigating factors are not applicable to this case.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and E 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 Notification Letter related to Guidelines G and E. Accordingly, I find 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.

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