



at dinner each night, and then on weekends drinking more while watching some sort of sports game throughout the entire day (approx. 14 hours).” *Id.* at 57. She also reported that before 2016, she consumed approximately six to eight beers per night. *Id.* She also reported that in January 2013, she was charged with a misdemeanor liquor violation. *Id.* at 58. Finally, in an April 2021 QNSP, the Individual reported that in October 2010, while underage, she consumed alcohol with friends, and consequently, had an altercation with a friend and had to serve community service at her college. Ex. 13 at 164.

Due to the security concerns raised by the Individual’s LOI responses, the LSO referred the Individual for an evaluation by a DOE consultant psychologist (DOE Psychologist), which occurred in December 2023. Ex. 11. The DOE Psychologist summarized his findings from the evaluation in a report (Report). *Id.* As part of the evaluation, the Individual underwent alcohol testing, in the form of a Phosphatidylethanol (PEth)<sup>2</sup> test, which was positive at a level of 283 ng/mL, which a medical doctor opined suggested the Individual engaged in “heavy drinking.” *Id.* at 91-92. Based on his evaluation of the Individual and his review of the results of the Individual’s alcohol testing, the DOE Psychologist opined that the Individual met sufficient diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)* for a diagnosis of Alcohol Use Disorder (AUD), Severe, without adequate evidence of rehabilitation or reformation *Id.* at 73–74.

In March 2024, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. Ex. 1 at 6–8. 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) of the Adjudicative Guidelines. *Id.* at 5.

In April 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 three witnesses: the Individual, the Individual’s friend, and the DOE Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-24-0113 (Tr.). Counsel for the DOE submitted 14 exhibits, marked as Exhibits 1 through 14. The Individual submitted five exhibits, marked as Exhibits A through E.

## 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

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<sup>2</sup> The DOE Psychologist’s Report indicates that PEth is “a molecule made only when ingested alcohol reaches the surface of the red blood cell and reacts with a compound in the red blood cell membrane. Because nothing but ethyl alcohol can make PEth in the red blood cell, the PEth test is 100% specific for alcohol consumption.” Ex. 11 at 71, 91. The Report also indicates that “a PEth level reflects the average amount of alcohol consumed over the previous 28-30 days” and a “PEth result exceeding 20 ng/mL is evidence of ‘moderate to heavy ethanol consumption.’” *Id.*

doubt concerning her eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1 at 5.

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), (d).

In citing Guideline G, the LSO relied upon the DOE Psychologist’s conclusion that the Individual met sufficient *DSM-5-TR* criteria for a diagnosis of AUD, Severe, with no adequate evidence of rehabilitation or reformation. Ex. 1 at 5. The LSO also cited that: 1) on September 15, 2023, the Individual tested positive for alcohol consumption during a random BAT and Drug Screening at work; 2) the Individual reported that from 2017 to her positive BAT, she would consume one to two beers each night during the weekdays and more on the weekends totaling about twenty to thirty beers per week; 3) she reported that from August 2010 to 2016, she would consume six to eight beers per night; 4) in January 2013,<sup>3</sup> police charged her with a misdemeanor, liquor violation, after she consumed twelve to thirteen beers; and 5) in October 2010, she binge consumed alcohol to the point of impairment and engaged in an altercation with another person. *Id.*

Considering the information cited by the LSO, I find the LSO properly invoked Guideline G.

### III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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).

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<sup>3</sup> In the QNSP, the Individual reported that she believed this arrest occurred in approximately September 2013. Ex. 13 at 159–60.

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 LOI, the Individual reported that the night before her September 2023 BAT, she attended a softball game and consumed approximately one to two beers. Ex. 10 at 56. She also reported that after the softball game, she had dinner with a few friends, during which she shared approximately “4 pitchers of beer amongst 7 friends.” *Id.* She reported that before her BAT, she typically consumed approximately “20-30 beers a week . . . 1-2 at dinner each night, and then on weekends [ , she drank] more while watching some sort of sports game throughout the entire day.” *Id.* at 57. She reported that after the BAT, on September 15, 2023, she “reduced [her] alcohol consumption to approx. 5 beers per week.” *Id.* at 56. She reported that in 2016, she reduced her alcohol consumption to “1-2 beers per night,” and during the past five years, she typically consumed six to eight beers per night. *Id.* She also reported that after being charged with a liquor violation in January 2013, she was ordered to take a 1.5-hour class at a community college and to see a substance abuse counselor, but she was never diagnosed with anything. *Id.* at 58. She also reported that the last time she consumed alcohol was two weeks before she completed the LOI, on November 4, 2023, during which she consumed four beers while watching football. *Id.* at 56.

In September 2023, after her positive BAT, the Individual was evaluated by a Licensed Psychologist (LP) at her employer. Ex. 11 at 69. The Report indicates that during his consultation with the LP regarding his evaluation of the Individual, the LP described the Individual as having a “nonchalant attitude toward the positive [BAT] result” and found the Individual “did not recognize that she was in trouble.” *Id.* . The LP opined that because the Individual reported to her BAT “76 minutes after she was notified” of the test, he believed the Individual “may have intentionally delayed her arrival to avoid the possibility of a positive [result].” *Id.*

In October 2023, the Individual was evaluated by a substance abuse counselor, at the request of her employer. Ex. 6 at 26; Ex 11 at 69. After the evaluation, the counselor opined that the Individual’s social circle was “alcohol laden.” Ex. 6 at 26. The counselor did not formally diagnose the Individual but opined that “it was likely that she meets diagnostic criteria for [AUD], Moderate,” and recommended that she enroll in an intensive outpatient treatment program (IOP). Ex. 11 at 69.

On December 15, 2023, the Individual was evaluated by the DOE Psychologist.. Ex. 11. The Report indicates that during the Individual’s evaluation, she reported to the DOE Psychologist that she started drinking alcohol at age 16. *Id.* at 67. The Report also indicates that when the Individual feels “down” she drinks more and when she feels “up” she drinks less. *Id.* The DOE Psychologist found the Individual’s history of alcohol consumption was consistent with what she reported in her LOI and that her social environment was one in which “alcohol is consistently present and consumed.” *Id.* at 67, 70. The Individual reported that after her positive BAT, she reduced her alcohol intake to “approximately five to six beers per week,” and within the last 30 days, she consumed “5, maybe 6” beers. *Id.* at 67–68. She also reported that her last use of alcohol was three, 30-ounce cocktails, on Saturday, December 9, 2023. *Id.* at 68.

Regarding her January 2013 arrest for a liquor violation, the Individual told the DOE Psychologist that before her arrest, she consumed “12 or 13 beers” with friends while standing outside of an apartment building. Ex. 11 at 67. She said the police arrived in response to a noise complaint and after noticing the Individual had “difficulty walking, determined that she was too inebriated to walk home, and transported her to the police station where she was not arrested but did receive the citation for [a liquor violation].” *Id.* After her arrest, the Individual received “deferred adjudication and was required to take a 90-minute alcohol education class.” *Id.* The charges were dismissed after she completed the class. *Id.* Regarding the October 2010 altercation, the Individual told the DOE Psychologist that she was consuming alcohol with students, while in college, and got into an argument with another student outside of her dormitory, and the argument escalated to a physical altercation. *Id.*

As part of the psychological evaluation, the DOE Psychologist had the Individual undergo a PEth test. Ex. 11 at 71. The results of the Individual’s PEth test were positive at a level of 283 ng/mL. *Id.* at 71, 93. A medical doctor, who interpreted the Individual’s PEth test results, opined that “[the Individual’s] positive PEth results indicate that she is consuming alcohol in a significantly greater amount than she reported in her LOI response.” *Id.* at 72, 91–92. The DOE Psychologist opined that despite the employment consequences from her positive BAT, the Individual “is continuing to consume alcohol in a pattern consistent with binge drinking,” “[s]he presents as naïve and nonchalant about her alcohol use and its consequences,” and “she drinks more than she is aware.” *Id.* at 73. The DOE Psychologist diagnosed the Individual with AUD, Severe, without adequate evidence of rehabilitation or reformation. *Id.* at 73–74. The DOE Psychologist recommended that, to show adequate evidence of rehabilitation or reformation, the Individual enter and complete an IOP, engage in “aftercare support for one year,” and demonstrate abstinence from alcohol for one year, supported by monthly PEth testing.<sup>4</sup> *Id.* at 74.

In her request for a hearing, the Individual indicated that she started an IOP on approximately April 2, 2024, and the expected completion date of the IOP was May 30, 2024. Ex. 2 at 10. The Individual also indicated she was looking into an “[Alcoholics Anonymous (AA)] meeting to attend and help with [her] rehabilitation and reform.” *Id.* As part of her hearing exhibits, the Individual submitted a Certificate of Completion indicating she completed an IOP on May 30, 2024. Ex. D. The Individual submitted documentation of six BATs between September 2023 to July 2024, the results of which were all negative for alcohol consumption.<sup>5</sup> Ex. C at 1–6. The Individual also submitted the results of a July 2024 PEth test, which was negative for alcohol consumption. Ex. E. She submitted documentation indicating she had scheduled follow-up visits with the LP in May 2024, June 2024, and July 2024. Ex. B.

At the hearing, the Individual testified that between 2010 and 2016, she typically consumed six to eight beers every night. Tr. at 20. She stated that after 2016, her alcohol consumption “slowed down” due to medical issues, but she would still consume ten beers a night during weekend nights.

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<sup>4</sup> The DOE Psychologist also found the Individual met the diagnostic criteria for “Other Specified Depressive Disorder” and “Unspecified Anxiety Disorder,” which he found she was successfully managing with medication. Ex. 11 at 72, 74.

<sup>5</sup> The Individual underwent BATs on September 26, 2023, September 29, 2023, January 24, 2024, May 9, 2024, July 2, 2024, and July 30, 2024. Ex. C.

*Id.* at 21–23. She stated that after the September 2023 BAT, she started monthly sessions with the LP, during which she discussed her alcohol consumption, but the LP never told her she needed to stop drinking. *Id.* at 33, 53. She admitted that, at that time, she did not believe she needed alcohol treatment. *Id.* at 49.

The Individual further testified that leading up to her December 2023 psychological evaluation she was still drinking alcohol, consuming “maybe ten beers a week,” during weekends. Tr.at 30, 50–51. She stated that when she wasn’t drinking beer, she would have three to four mimosas, once every couple of weeks. *Id.* She stated she last consumed alcohol in February 2024. *Id.* at 34. She explained that she decided to stop drinking in February 2024 because that is when someone notified her, verbally, that her security clearance had been suspended, and she realized she needed to stop drinking. *Id.* at 52–53.

The Individual further testified that the IOP helped her realized she had a problem with alcohol. Tr. at 10. She explained that during the IOP, she learned alcohol played a big role in her life, she used it as a form of celebration, and it became a habit. *Id.* at 11–12. She stated that now, if she wants to celebrate something, she finds ways to celebrate that do not involve consuming alcohol. *Id.* She stated that she realized that her alcohol consumption was not healthy and since she has stopped drinking, her body is healthier, and she is in a “a better place” mentally and physically. *Id.* at 12.

She stated that since June 2024, she has attended an aftercare program, consisting of group sessions once or twice a week. Tr. at 56–57, 60–61. She stated that she stays engaged in the aftercare program by talking about her situation and listening to other people talk about their experiences. *Id.* at 58. She stated the aftercare program is teaching her how to maintain her sobriety and a healthy lifestyle. *Id.* at 58–59. She is also learning that much of what triggers her to drink is related to grief related to her medical issues, and she is learning how to counteract that without using alcohol. *Id.* at 64. She also realized that she was naïve about her alcohol consumption, which could have affected her reporting of her alcohol consumption to the DOE Psychologist during her evaluation. *Id.* at 60. She stated she has also attended a couple of AA meetings, but found AA was not a good fit for her because of AA’s “religious setting.” *Id.* at 61. She stated she also tried a program called SMART recovery,<sup>6</sup> which uses a mobile app and “chat room style things” that she will use if she needs someone to talk to outside of her usual support group. *Id.* She also continues to meet with the LP monthly. *Id.* at 62.

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<sup>6</sup> SMART stands for Self-Management and Recovery Training. According to its website,

SMART [program] is an evidenced-based recovery method grounded in Rational Emotive Behavioral Therapy (REBT) and Cognitive Behavioral Therapy (CBT), that supports people with substance dependencies or problem behaviors to:

1. Build and maintain motivation
2. Cope with urges and cravings
3. Manage thoughts, feelings and behaviors
4. Lead a balanced life

*What is SMART Recovery?*, SMART Recovery, <https://smartrecovery.org/what-is-smart-recovery> (last visited Jun. 20, 2024).

The Individual further testified that she keeps nonalcoholic beers at home, which she uses to “trick [her] mind” if she is in a situation where people are drinking around her. Tr. at 66. She provided an example of one instance where she was in an environment where people were drinking around her and “rather than try to explain to everybody that [she] was sober ... sometimes it’s just easier to have ... the nonalcoholic beer.” *Id.* at 66–67. She also stated she avoids spending time with friends who drink heavily. *Id.* at 68. She stated that she intends to continue the aftercare program for the foreseeable future. *Id.* at 70, 73, 76. She also stated she uses her mother and friends as a support system, and she has the tools and resources to maintain her sobriety. *Id.* at 76.

The Individual’s friend testified that she has known the Individual for four years and talks to her almost every day. Tr. at 36. She stated that she and the Individual typically see each other once per week, during which they hang out at home and watch movies. *Id.* at 36–37. She explained that when the two of them would drink together, the Individual would consume approximately six or seven beers, but the Individual would typically consume more if they were watching a sporting event. *Id.* at 37–38, 40–41. She stated the last time she observed the Individual consume alcohol was “before the summer started” but, she could not recall the exact month. *Id.* at 40–41. She stated that, over the summer, she has not observed any alcohol in the Individual’s home, and since the Individual stopped drinking, she does not go out to eat with her friends as often and she appears to be a happier person. *Id.* at 43–46.

The DOE Psychologist testified as to the reasons he diagnosed the Individual with AUD, Severe, and the treatment recommendations that were noted in the Report. Tr. at 88–91. As to the Individual’s rehabilitation from her AUD, he stated that although the Individual was being more honest about her alcohol use at the hearing than she was during her psychological evaluation, she was still in the process of rehabilitation from her AUD. *Id.* at 90–91. The DOE Psychologist added that the type of treatment the Individual has received so far has been adequate, but she has only been in such treatment for five months, and he would like to see her in treatment for a longer period of time. *Id.* at 91, 93. He also stated the Individual did not present “a consistent identification of abstinence through laboratory testing.” *Id.* He stated that that random BATs “don’t really give you much indication of alcohol use beyond the 24 to 48 hours prior to testing.” *Id.* at 91. The DOE Psychologist also opined that the results of the Individual’s July 2024 PEth test covered only a fraction of the recommended period of abstinence. *Id.* Finally, he said that he likes the fact that the Individual recognizes the benefit of individual therapy to address her reasons for drinking and he recommended that she continue to attend aftercare. *Id.* at 92.

As to the Individual’s reformation efforts, the DOE Psychologist testified that the Individual’s environment concerns him. Tr. at 93. He stated that the Individual’s primary social circle is still drinking alcohol, and she still participates in activities where the people around her are drinking alcohol. *Id.* He also stated the Individual’s use of non-alcoholic beer “worries” him because it indicates she has a desire to drink alcohol and is going to “engage the taste, which is the beginning of a trigger.” *Id.* He stated he appreciates the Individual not wanting to “make a big deal” out of the fact that she is not drinking, but she is creating the appearance of drinking, which is “just one step closer to, ‘Well, what’s one?’” *Id.* at 94. He opined that, because of the Individual’s insufficient time in treatment and her “lack of consistency in proving abstinence,” she has not shown adequate evidence of rehabilitation or reformation from her AUD, Severe. *Id.* at 97.

## V. Analysis

### 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.

Adjudicative Guidelines at ¶ 23.

Regarding factor (a), the Individual's reported consumption of one to two beers a night during weekdays and more on weekends, between 2017 and 2023, and six to eight beers a night between 2010 and 2016, demonstrates that her alcohol consumption was frequent. Although the Individual's October 2010 altercation and January 2013 misdemeanor liquor violation occurred over ten years ago, both incidents involved the heavy consumption of alcohol while socializing with others, which is not an unusual circumstance for the Individual. Finally, the Individual's positive BAT and subsequent AUD diagnosis occurred just over eight months ago, and at the time of the hearing, her claimed sobriety was only six months.<sup>7</sup> Neither of these periods, eight months or six months, is a sufficient period of time to demonstrate that her AUD has been resolved and her alcohol misuse is unlikely to recur, especially given that the DOE Psychologist testified that she is not rehabilitated or reformed and that the provided tests do not demonstrate that she was abstinent with any degree of certainty. Therefore, I find that the Individual has not mitigated the security concerns under factor (a).

Regarding factor (b), the Individual testified that she did not realize she had an issue with alcohol until February 2024, when she learned her access authorization was suspended. Although the Individual successfully completed an IOP, she had only been engaged in an aftercare program for two months at the time of the hearing, which is less than the period recommended by the DOE

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<sup>7</sup> She testified that she ceased consuming alcohol in February 2024. Tr. at 34.



Psychologist to resolve her AUD, Severe. Further, the DOE Psychologist opined that the Individual's submission of six negative BATs and one negative PEth test is insufficient to show she has abstained from alcohol for the duration since she claims to have ceased alcohol consumption, let alone the 12 months necessary to resolve her AUD, Severe. Therefore, I find that the Individual has not demonstrated a clear and established pattern of abstinence from alcohol and has not mitigated the security concerns under factor (b).

Regarding factor (c), the Individual submitted documentary evidence that she completed an IOP but she had only completed two months of an aftercare program as of the hearing date and claims to have abstained from alcohol for six months, less than the 12 months recommended by the DOE Psychologist to resolve her AUD, Severe. In addition, the Individual testified that she relies upon non-alcoholic beers to trick her mind into thinking she is consuming alcohol and to maintain her abstinence in the presence of others who are consuming alcohol. The DOE Psychologist expressed concern about the Individual's use of non-alcoholic beer because it is the beginning of a trigger and also hiding her desire to consume alcohol. He also opined that the Individual has not completed enough treatment to be rehabilitated and reformed from her AUD, Severe. With these facts, I cannot conclude the Individual has made satisfactory progress in her alcohol treatment, and she has not mitigated the security concerns under factor (c).

Regarding factor (d), as explained above, the Individual successfully completed an IOP, but she had only participated in aftercare for two months as of the hearing and had not yet completed the program. In addition, the Individual has not provided objective evidence she has abstained from alcohol consumption in accordance with the DOE Psychologist's treatment recommendations. Therefore, I find the Individual has not mitigated the security concerns under factor (d).

Accordingly, I find that none of the mitigating conditions have been satisfied, and that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

## **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 Notification Letter related to Guideline G. Accordingly, I find the Individual has not demonstrated that restoring her 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