

and binge consumed alcohol to the point of impaired judgment. *Id.* at 47. He also opined that the Individual met sufficient diagnostic criteria for diagnoses of Alcohol Use Disorder (AUD), Mild, and Attention-Deficit/Hyperactivity Disorder (ADHD), predominantly inattentive presentation, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*, and that both of those conditions impaired the Individual's judgment, stability, reliability, or trustworthiness. *Id.* at 47–48.

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 7–9. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G and I of the Adjudicative Guidelines. *Id.* at 5–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted ten exhibits (Ex. 1–10). The Individual submitted ten exhibits (Ex. A–J). The Individual testified on his own behalf and offered the testimony of a counselor with his employer's employee assistance program (EAP Counselor), a medical doctor treating his ADHD (Individual's Doctor), and a licensed social worker providing him with counseling services (Individual's Counselor). Hearing Transcript, OHA Case No. PSH-24-0128 (Tr.) at 3, 11, 31, 72, 84–85. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 102.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. The SSC cited the Individual's MIP and DWI offenses, the DOE Psychologist's opinion that the Individual habitually and binge consumed alcohol to the point of impaired judgment, and the DOE Psychologist's determination that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Mild, under the *DSM-5-TR*. Ex. 1 at 5. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work, habitually and binge consumed alcohol to the point of impaired judgment, and was diagnosed with AUD justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

The LSO cited Guideline I (Psychological Conditions) as the other basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 6. "Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline." Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist's opinion that the Individual met sufficient diagnostic criteria for a diagnosis of ADHD, predominantly inattentive presentation, under the *DSM-5-TR*. Ex. 1 at 6. The LSO's citation to the opinion of the DOE Psychologist that

the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness justifies its invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

In 1998, the Individual was cited for MIP after a law enforcement officer observed the Individual and a friend consuming beer. Ex. 10 at 295. In 2016, the Individual was arrested and charged with DWI. *Id.* Prior to his arrest for DWI, the Individual consumed approximately six beers over two hours while working on his vehicle. *Id.* After finishing the repairs, the Individual decided to test drive the vehicle and struck a fence. *Id.*; Tr. at 32. The Individual pleaded guilty, and was sentenced to pay fines and fees, attend DWI education and Mothers Against Drunk Driving classes, suspension of his driver's license for one year, and a 90-day term of probation. Ex. 10 at 296.

In 2023, the Individual began meeting with the Individual's Counselor for individual counseling related to emotional regulation and managing family relationships. Tr. at 45, 87; *see also* Tr. at 85–86 (indicating that the Individual previously met with the Individual's Counselor for family counseling services related to his son's needs from 2021 to 2023). The Individual's counseling did not address alcohol or ADHD. *Id.* at 86 (indicating in the Individual's Counselor's testimony that he "didn't see [alcohol] as a problem [for the Individual], and it wasn't the focus of therapy"); Ex. 7 at 42 (reflecting that the Individual's Counselor was unaware of the Individual's ADHD diagnosis and did not endorse a diagnosis of AUD when contacted by the DOE Psychologist).

For approximately two decades, the Individual consumed alcohol at least two to three times weekly and consumed alcohol to the point of intoxication approximately twice monthly. Ex. 6 at 30–31;

Ex. 7 at 41; *see also* Tr. at 34, 47 (testifying that he began using alcohol as a coping mechanism to control stress and anxiety prior to 2006). During the clinical interview with the DOE Psychologist, the Individual explained that he used alcohol to manage feelings of anxiety and restlessness. Ex. 7 at 41. The Individual also reported to the DOE Psychologist that he consumed more alcohol than he intended “because it’s there” and that his wife had expressed concern to him regarding his alcohol use. *Id.* The Individual expressed the opinion that, upon reflecting on his alcohol consumption following his response to the LOI, he “realize[d] [he was] drinking too much” and “need[ed] to do something.” *Id.* However, the Individual reported that he consumed ten beers in a sitting four days prior to meeting with the DOE Psychologist. *Id.* At the request of the DOE Psychologist, the Individual provided a blood sample for a phosphatidylethanol (PEth)³ test. *Id.* at 44–45, 70. The PEth test was positive at 47 ng/mL. *Id.* at 70. According to a medical doctor who interpreted the PEth test results, the test results provided confirmatory evidence that the Individual had engaged in significant alcohol consumption prior to the PEth test. *Id.* at 68.

The Individual told the DOE Psychologist that he had been diagnosed with ADHD as a child. *Id.* at 42. The Individual indicated that his ADHD interfered with his daily functioning by causing him to experience inattention, hyperactivity, and impulsivity. *Id.* As part of the psychological evaluation, the DOE Psychologist asked the Individual to remember three words and to repeat them later in the evaluation when prompted. *Id.* at 43. The Individual could only recall one of the words he was asked to remember, which the DOE Psychologist attributed to difficulties with attention and concentration due to the Individual’s ADHD. *Id.*

The DOE Psychologist issued his Report on February 4, 2024. *Id.* at 48. In the Report, the DOE Psychologist opined that the Individual met sufficient criteria for a diagnosis of AUD, Mild, under the *DSM-5-TR*, and that he habitually and binge consumed alcohol to the point of impaired judgment.⁴ *Id.* at 47. The DOE Psychologist recommended that the Individual participate in an intensive outpatient program (IOP) for alcohol treatment followed by aftercare for one year, and that he abstain from alcohol consumption throughout treatment and document his abstinence from alcohol with monthly PEth testing. *Id.* at 48. However, he indicated that abstaining from alcohol for one year, with monthly PEth testing to corroborate the Individual’s abstinence from alcohol, would be sufficient to establish reformation without treatment. *Id.*

Additionally, the DOE Psychologist endorsed the Individual’s ADHD diagnosis. *Id.* He opined that the Individual was using alcohol to manage feelings of “restlessness and agitation” from ADHD, and recommended that the Individual “seek appropriate treatment for his symptoms of ADHD” *Id.*

The Individual decided to abstain from alcohol after receiving the SSC and Report in late March 2024. Tr. at 35. The Individual provided samples for PEth testing on May 3, 2024, June 2, 2024,

³ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol up to four weeks prior to sample collection. Ex. 14 at 129, 38–39.

⁴ The DOE Psychologist defined habitual consumption of alcohol to the point of impaired judgment as at least monthly intoxication based on prior decisions by OHA Administrative Judges interpreting the term. Ex. 7 at 47, 55. He defined binge consumption of alcohol as “episodic intoxication with periods of high consumption followed by periods in which his intake is lower” based on a definition developed by the Substance Abuse and Mental Health Services Administration. *Id.*

July 5, 2024, August 7, 2024, and September 6, 2024, each of which was negative for traces of alcohol consumption. Ex. B; Ex. C; Ex. D; Ex. E; Ex. F.

Several days after receiving the SSC in March 2024, the Individual began participating in an alcohol education class through his EAP. Tr. at 12. According to the EAP Counselor, this class focused on increasing participants' awareness of their relationship with alcohol, providing information on healthy drinking practices, and helping participants make responsible choices. *Id.* at 15; *see also id.* at 36 (reflecting the Individual's testimony that he learned "what a standard drink was," DOE's expectations related to alcohol consumption, and methods for coping with stress and anxiety without resorting to alcohol). The Individual successfully completed the class on May 9, 2024. Ex. A. The Individual subsequently enrolled in an abstinence support group through his EAP and attended seven sessions from mid-June to the date of the hearing. Tr. at 14–16; *see also id.* at 17–18, 53–54 (reflecting the EAP Counselor's testimony that the Individual's attendance was inconsistent and the Individual's testimony that he did not regularly attend meetings because he felt that his management did not support him doing so during working hours); *id.* at 53 (indicating that the Individual missed three weeks of sessions due to volunteering for a program in which his son was participating). The Individual also met with the EAP Counselor on five occasions for individual counseling from March 2024 to the date of the hearing. *Id.* at 14.

The Individual attended several Alcoholics Anonymous (AA) meetings but stopped doing so because he found the AA atmosphere to be "cultish." *Id.* at 20. The Individual received a referral from his EAP to an IOP but decided not to attend because of the distance between his home and the IOP. *Id.* at 26, 64.

In April 2024, the Individual began meeting with the Individual's Doctor for treatment of his ADHD. *Id.* at 37, 73. The Individual's Doctor prescribed the Individual medication and believes that the Individual has taken his medication as prescribed based on the Individual's self-reports of his symptoms and the Individual's Doctor's observations of improvements to the Individual's attention and concentration in sessions. *Id.* at 73–75, 81. The Individual testified that his attention, memory, and mood have improved since beginning treatment of his ADHD, and that, except for "a day here or there," he has taken his medication as prescribed. *Id.* at 38–39. The Individual meets with the Individual's Doctor on a monthly basis and has attended sessions as scheduled. *Id.* at 41, 77.

At some point in 2024, after having received the SSC, the Individual divulged to the Individual's Counselor that he had been abused by a relative as a child and that he had experienced intense feelings of fear and anxiety about this relative's presence in his life after the birth of his son because he feared that the relative would abuse his son. *Id.* at 46–49; *see also id.* at 49 (testifying that the relative in question died in 2017). Through counseling with the Individual's Counselor, the Individual formed the opinion that fear and anxiety related to the relative had exacerbated his use of alcohol as a coping mechanism. *Id.* at 49–50. The Individual testified that his counseling had helped him to process emotions related to the abuse and to better understand his mother's desire to have the relative present in the family's life prior to the relative's death. *Id.* at 51–52. As of the date of the hearing, the Individual and the Individual's Counselor were working on addressing his strong anger towards his mother related to the relative being present in his life in the past. *Id.* at 52, 97–98.

The Individual's Counselor testified at the hearing that he had diagnosed the Individual with unspecified trauma and stressor related disorder. *Id.* at 95. He indicated that he has focused on treating the sources of the Individual's trauma, rather than maladaptive coping mechanisms, and therefore his treatment has not addressed the Individual's AUD.⁵ *Id.* at 89–92, 100. He reported that the Individual's attendance and engagement in counseling had been "excellent." *Id.* at 96. The Individual's Counselor opined that the Individual had demonstrated improved openness and insight since divulging abuse by a relative, and that the Individual is less defensive in counseling sessions. *Id.* at 92–93. The Individual's Counselor further opined that, by addressing repressed trauma and learning to manage the emotions associated with that trauma, the Individual would no longer need to use alcohol as a coping mechanism. *Id.* at 94–95.

The Individual testified at the hearing that "at some point in the future, I'll have a drink," but that he believed that his counseling and treatment for his ADHD would prevent him from misusing alcohol again in the future. *Id.* at 62–63; *but see id.* at 25 (reflecting the EAP Counselor's testimony that the Individual told her that he intended to permanently abstain from alcohol). The Individual indicated that he sometimes felt the desire to consume alcohol with certain foods but denied experiencing symptoms of withdrawal or cravings for alcohol. *Id.* at 55. The Individual indicated that, since discontinuing alcohol use, he had become more involved in hobbies and completing projects around his home. *Id.* at 56. He asserted that improved relationships with his children motivated him not to consume alcohol. *Id.* at 57.

The DOE Psychologist testified that the Individual's ADHD did not compromise the Individual's trustworthiness, judgment, or reliability in of itself, but that the Individual's consumption of alcohol to manage the symptoms of ADHD had presented such concerns when he conducted the psychological evaluation. *Id.* at 104. He testified that the Individual's treatment with the Individual's Doctor had improved the management of the Individual's ADHD symptoms, and that he no longer believed that the Individual's ADHD impaired his judgment, stability, reliability, or trustworthiness. *Id.* at 104, 118.

The DOE Psychologist opined that the Individual's participation in programming through the EAP addressed some of the goals he would have hoped for the Individual to have achieved through an IOP, but that the classes did not provide sufficiently rigorous or individualized treatment to satisfy his recommendations. *Id.* at 106–07. He noted that an IOP would have included more intensive programming, a greater number of hours of weekly treatment, a longer duration, an individualized treatment component, and professional aftercare support not provided by the Individual's EAP programming. *Id.* at 107–09, 119–20.

The DOE Psychologist cited the Individual's consistent misuse of alcohol throughout his adult life and use of alcohol as a coping mechanism as "red flags" for relapse. *Id.* at 107. While the DOE Psychologist acknowledged the benefits of addressing the root causes of the Individual's alcohol misuse through counseling, he noted that long-term alcohol misuse has physiological and

⁵ The Individual's Counselor testified at the hearing that he was "a little surprised" by the DOE Psychologist's diagnosis of the Individual with AUD because he "didn't know that [the Individual] was drinking as much as [he] reported [to the DOE Psychologist]." Tr. at 89. In light of this new information, the Individual's Counselor indicated that "he agreed with the [R]eport." *Id.*

neurological effects that create risks for addiction and relapse distinct from the original triggers which led the Individual to misuse alcohol. *Id.* at 107, 117. In light of the Individual's failure to pursue treatment of sufficient intensity or duration, such as the IOP recommended in the Report, and the fact that the Individual had not yet abstained from alcohol for twelve months, the DOE Psychologist opined that the Individual remained at risk of relapse and had not demonstrated rehabilitation or reformation. *Id.* at 110.

V. ANALYSIS

A. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

The Individual consumed alcohol to the point of intoxication multiple times monthly and routinely used alcohol to manage stress and anxiety throughout his adult life. Accordingly, his alcohol misuse was neither infrequent nor occurred under unusual circumstances. While the Individual has abstained from alcohol for approximately six months, this period is too brief in light of his history of alcohol misuse for me to conclude that he will not return to problematic alcohol consumption in the future based on the passage of time alone. Moreover, until such time as the Individual has resolved his problematic alcohol consumption, he will remain at risk of committing alcohol-related offenses like his 2016 DWI. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual has acknowledged his maladaptive alcohol use, pursued treatment for the ADHD symptoms and personal trauma that may have precipitated his alcohol misuse in the past, undergone PEth testing to mostly corroborate his claimed six months of abstinence from alcohol, and participated in classes through his employer's EAP to support him in abstaining from alcohol.

However, the Individual has not yet abstained from alcohol for twelve months as recommended by the DOE Psychologist. Moreover, he has not participated in an IOP and aftercare as recommended.

While the Individual's ADHD and personal trauma may well have been the root causes of the Individual's alcohol misuse, the DOE Psychologist testified convincingly that the addiction and chemical dependency aspects of long-term alcohol misuse present distinct issues for treatment separate from the factors that stimulated the Individual to use alcohol. Although the Individual's Counselor opined that the Individual's efforts to address his trauma could resolve his problematic relationship with alcohol, the Individual's Counselor has no demonstrated expertise in addressing the physiological effects of long-term alcohol misuse. *See* Ex. J (establishing that the Individual's Counselor is primarily focused on providing family therapy and, other than participating in trainings during a one-year internship, has no substantive training or experience specifically related to alcohol cessation or counseling). Moreover, I find it notable that the Individual's alcohol misuse persisted without change for approximately seven years following the death in 2017 of the relative who abused him, suggesting that the causes of the Individual's alcohol misuse were not exclusively fear and anxiety related to the presence of the relative in his life. The Individual bears the burden of proof to establish that granting him access authorization will not endanger the common defense and security and is clearly consistent with the national interest, and I find that the Individual's Counselor's opinion alone, absent additional support, is insufficient to overcome the concerns raised by the DOE Psychologist's opinion.

The Individual's counseling has not addressed the considerations raised by the DOE Psychologist related to addiction and chemical dependency, and the classes in which he has participated through his employer's EAP are far less rigorous than the IOP recommended by the DOE Psychologist. As the Individual has not yet established twelve months of abstinence from alcohol as recommended by the DOE Psychologist, and he has not participated in treatment appropriate to address his long-term alcohol misuse, I find that the second mitigating condition is inapplicable. Adjudicative Guidelines at ¶ 23(b).

The third mitigating condition is inapplicable because the Individual's treatment is inconsistent with that recommended by the DOE Psychologist and insufficiently rigorous to adequately address his AUD. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual has neither completed the IOP recommended by the DOE Psychologist nor established twelve months of abstinence from alcohol. *Id.* at ¶ 23(d).

For the aforementioned reasons, none of the mitigating conditions under Guideline G are applicable to the facts of this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline I

Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

There is no dispute that the Individual's ADHD is readily controllable with treatment. The Individual entered treatment with the Individual's Doctor in April 2024, he has reportedly complied with the medication regimen prescribed by the Individual's Doctor, and his ADHD symptoms are under control. Moreover, the DOE Psychologist opined that the Individual's ADHD did not presently compromise the Individual's judgment, reliability, or trustworthiness. Accordingly, I find that the Individual has established the applicability of the first and fifth mitigating conditions and has resolved the LSO's security concerns under Guideline I. *Id.* at ¶ 29(a), (e).

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G and I 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 under Guideline I, but not the security concerns under Guideline G. Accordingly, I have determined that the Individual should not be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals