



the Individual underwent a Phosphatidylethanol (PEth)<sup>3</sup> test, which came back positive at 195 ng/mL. *Id.* at 83.

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

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 twelve exhibits (Ex. 1–12). The Individual submitted six exhibits (Ex. A–F). The Individual testified on his own behalf and offered the testimony of three additional witnesses. Hearing Transcript, OHA Case No. PSH-24-0146 (Tr.) at 17–70. The LSO called the DOE Psychologist to testify. *Id.* at 70–76.

## II. THE SECURITY CONCERNS

Guideline G, under which the LSO raised the security concerns, relates to security risks arising from excessive alcohol consumption. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. In citing Guideline G, the LSO relied upon the DOE Psychologist’s March 2024 diagnosis that the Individual suffered from Unspecified Alcohol-Related Disorder. Ex. 1 at 5. The LSO also cited the Individual’s December 2023 arrest for Assault Causes Bodily Injury after he admitted that he had consumed between six and nine alcoholic beverages prior to the incident, and his positive PEth test.<sup>4</sup> *Id.*

## III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See*

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<sup>3</sup> According to the DOE Psychologist’s report of his evaluation,

PEth is not a normal body metabolite. PEth accumulates when ethanol binds to the red blood cell membrane. The PEth level reflects the average amount of alcohol consumed over the previous 28-30 days as red blood cells degrade and enzymatic action removes PEth. A MedTox PEth result exceeding 20 ng/mL is evidence of NIAAA and WHO “Low”-“Medium” risk consumption.

Ex. 10 at 83.

<sup>4</sup> In reviewing the allegations raised pursuant to Guideline G, I cannot find the mere fact that the Individual’s PEth test was positive to be sufficient in and of itself to raise a security concern pursuant to Guideline G. As such, although I will consider how the positive PEth test informed the DOE Psychologist’s opinion, I find that that allegation was not properly raised by the LSO as a discrete security concern, and I will not analyze it herein.

*Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

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

#### IV. FINDINGS OF FACT AND HEARING TESTIMONY

The Individual testified that he went riding on his motorcycle on the afternoon of September 22, 2023. Tr. at 32. He stated that he ate lunch and “went to several different places” and had “a drink here and we’d have a drink there.” *Id.* The Individual estimated that he consumed between six and nine alcoholic beverages. Ex. 10 at 80. As the Individual was leaving the last bar, where he had a few drinks, an acquaintance from high school attempted to stop him from driving his motorcycle home because the acquaintance believed that the Individual was too intoxicated to operate the vehicle safely. Tr. at 32–33; Ex. 10 at 80. At the hearing, the Individual admitted that he was probably intoxicated and should not have been driving home. Tr. at 32. He claimed that the acquaintance was very insistent, and the Individual asked the acquaintance to take his hands away from his motorcycle. *Id.* When the acquaintance refused and was belligerent, the Individual said he got off his motorcycle and “removed [the acquaintance] from the situation,” and after that, the Individual rode home. *Id.* at 33; Ex. 10 at 81. Several witnesses to these events told law enforcement that the Individual pushed and punched the acquaintance, causing the acquaintance to fall and hit his head on the ground with enough force to cause him to bleed.<sup>5</sup> Ex. 10 at 81; Ex. 6 at 45; Tr at 33.

The DOE Psychologist issued a psychological report (Report) issued after the evaluating the Individual. Ex. 10. The Individual also underwent a PEth test as a part of the DOE Psychologist’s evaluation. *Id.* at 84. The Individual’s PEth test was positive at 195 ng/mL, which, according to a medical doctor who reviewed the results of the PEth test, indicated that the Individual was consuming a “moderate to heavy” amount of alcohol. *Id.* The DOE Psychologist ultimately stated that he found that the Individual met the diagnostic criteria for Unspecified Alcohol-Related Disorder based on “his laboratory reported amount of alcohol consumption, his development of tolerance, his lack of truthfulness in reporting alcohol consumption, and his impaired judgment when using alcohol.” *Id.* at 85.

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<sup>5</sup> Although the incident occurred on September 22, 2023, the Individual did not turn himself in until December 20, 2023, when his wife noticed his name on “a warrant list.” Tr. at 52. The Individual asserted that he called the required people at his employer to report the charge, but that they failed to report the incident to DOE. *Id.* at 53–54. The Individual testified that he was questioned about the incident by law enforcement after it occurred, but on the advice of counsel, he did not give the investigator a statement at that time. *Id.* at 34–35.

The DOE Psychologist recommended that to demonstrate rehabilitation or reformation, the Individual should participate in an intensive outpatient program (IOP) with a minimum of nine hours of therapeutic and educational meetings a week for a period of twelve to sixteen weeks. *Id.* at 86. If such a program was not available to him, the DOE Psychologist indicated that a four-to-six-week program that met four nights a week could be utilized. *Id.* The program should have group and individual therapy components. *Id.* The DOE Psychologist further recommended that the Individual should complete weekly aftercare meetings for at least six months following the IOP and submit negative PEth tests to provide laboratory proof that he is not consuming alcohol. *Id.* The DOE Psychologist recommended that if the Individual did not complete an IOP, he should participate in Alcoholics Anonymous (AA) or a similar program for twelve months for four nights a week, showing participation in the twelve-step process, and provide twelve months of negative PEth tests. *Id.*

The Individual testified that he has not attended AA or had any type of alcohol-related treatment, although he does go to church. Tr. at 42–43. He admitted that he has not engaged in any of the treatment that the DOE Psychologist recommended; he claimed that he thought the recommendations in the Report were options he could pursue. *Id.* at 40. The Individual stated that he last consumed alcohol the Friday or Saturday prior to the hearing when he had a couple of beers. *Id.* at 44. The Individual claimed that he saw physical, emotional, and financial benefits of being abstinent during the few months where he “didn’t have anything to drink whatsoever.” *Id.* at 45. The Individual submitted a negative PEth test from August 2024 to support his testimony as to his changed alcohol consumption practices.<sup>6</sup> Ex. A; Tr. at 43.

The Individual’s wife testified she has never had any concern about his alcohol consumption. Tr. at 19, 25. She stated that he stopped consuming alcohol in July, but that he had a couple of beers the weekend prior to the hearing with a friend. *Id.* at 20, 23–24. She claimed that “it’s been a struggle for both of us” to adjust to the Individual having his clearance suspended. *Id.* at 21. The Individual’s wife stated that he stopped consuming alcohol “to get lab tests to try to help with this whole deal.” *Id.* at 24. She concluded that they have not discussed the Individual’s intentions regarding future use of alcohol. *Id.* at 24–25.

The Individual’s friend and the friend’s wife testified that they met the Individual at work, although they have both since retired. Tr. at 57, 66. The friend stated that he speaks to the Individual frequently and last saw him the Thursday before the hearing, when the Individual sat next to him at a bar and ordered a beer. *Id.* at 57–58. The friend claimed that he asked the Individual if he was going to drink the beer, because he was aware that the Individual had quit drinking, and the friend had previously observed the Individual decline alcohol when asked if he wanted any. *Id.* at 58. The friend stated that the Individual told him that:

he would probably like to have a drink . . . on occasions, but if it came down to the point where his job was in jeopardy . . . , that he would not drink. And I believe him with all my heart that he’s honest about that, because to go three or four months without drinking at all was kind of shocking to me.

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<sup>6</sup> While the Individual and DOE Counsel seemed to indicate that the Individual submitted a negative PEth test from October 2024, no such record was submitted to me as an exhibit. As explained *infra*, the existence or nonexistence of such a record makes no difference in my decision.

*Id.* at 60. The friend’s wife testified that she last saw the Individual at the neighborhood bar about two months prior to the hearing, and although alcohol was present, the Individual did not consume any. *Id.* at 67.

The DOE Psychologist testified that, after listening to all of the testimony given at the hearing, his opinion was unchanged from the opinion he provided in the Report. *Id.* at 73. He specifically noted that he was concerned because he did not “see evidence of a commitment to manage alcohol use” and believed the Individual demonstrated “an unwillingness to engage in any form of treatment or support for alcohol abstinence.” *Id.* at 73–74. Because of these observations, the DOE Psychologist stated that he felt the Individual had not adequately demonstrated rehabilitation or reformation. *Id.* at 74.

The day after the hearing, the Individual contacted his local AA chapter and secured a sponsor. Ex. F.<sup>7</sup> He stated that he planned to begin attending meetings “no later than one week from [the Saturday after the hearing].” *Id.*

## V. ANALYSIS

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.

At the time of the hearing, the Individual was still consuming alcohol, and the DOE Psychologist testified that it was his professional opinion that the Individual had not demonstrated adequate rehabilitation or reformation. While the Individual stopped consuming alcohol for a time, to, as his wife described, “get lab tests to try to help with this whole deal,” he did not take any steps to

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<sup>7</sup> The day after the hearing, the Individual sent me an email indicating his intent to start attending AA meetings and providing me the contact information for his sponsor. Ex. F. I accepted the email into the record and labeled it Exhibit F.

understand why DOE was concerned about his alcohol consumption. He did not undergo any treatment or attend AA meetings prior to the hearing. The Individual did not show any understanding that he had a problem with alcohol. Therefore, it cannot be said that so much time has passed, the behavior was so infrequent, or that it happened under unusual circumstances, and he has not mitigated the security concerns pursuant to mitigating factor (a). *Id.* at ¶ 23(a).

Regarding factor (b), the Individual did not acknowledge that his alcohol use was maladaptive, nor did he provide any evidence of actions taken to overcome any issues related to his alcohol consumption. While after the hearing he stated that he intends to begin to attend AA meetings, at the time of the hearing he had not shown that he had taken action to deal with any problems related to his alcohol misuse. Saying that he intended to attend AA meetings is a good first step, but it is not sufficient to show he has overcome the problem that gives rise to the security concerns. Further, the Individual relapsed, only days before the hearing, after a brief period of modified alcohol consumption.<sup>8</sup> Therefore, I cannot find that he has mitigated the security concerns pursuant to mitigating factor (b). *Id.* at ¶ 23(b).

The Individual did not testify to any treatment or counseling that he had completed, nor did he provide any documentary evidence of treatment or counseling. As such, I cannot find that he has mitigated the security concerns pursuant to mitigating factors (c) or (d). *Id.* at ¶ 23(c)–(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**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 Summary of Security Concerns. Accordingly, I have determined 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

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<sup>8</sup> As the Individual's relapse would have negated any period of modified consumption or abstinence supported by the October PEth test that the Individual failed to submit into evidence, the presence or absence of the exhibit is irrelevant to my analysis.