



Influence of Intoxicating Liquor or Drugs (Aggravated DWI), Abuse of a Child, and Failure to Notify Owner Upon Striking Fixture or Property. Ex. 9. In September 2019, the LSO issued the Individual a letter of interrogatory (LOI) concerning her alcohol-related arrests. Ex. 6. The Individual represented that she had consumed one mimosa and “three sips” of whisky prior to her arrest. *Id.* at 1–2. The Individual represented that she failed a field sobriety test in connection with her arrest for Aggravated DWI due to her chronic medical condition. *Id.* at 3. She denied that she had ever driven a vehicle while intoxicated. *Id.* at 7.

On January 7, 2020, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a clinical evaluation. Ex. 12 at 3. The Individual denied having ever driven a vehicle while intoxicated, represented that she consumed alcohol in moderation, and said that she had not consumed alcohol for more than two weeks prior to the clinical interview. *Id.* at 6–7. The Individual underwent a Phosphatidylethanol (PEth) test at the request of the DOE Psychologist, the results of which provided evidence that the Individual consumed significantly more alcohol than she had admitted during the clinical interview. *Id.* at 8.<sup>3</sup> The DOE Psychologist determined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Mild, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)* and habitually consumed alcohol to the point of impaired judgment. *Id.* at 10. The DOE Psychologist recommended that the Individual abstain from alcohol for at least six months, demonstrate her abstinence from alcohol through weekly ethyl glucuronide (EtG) tests or PEth tests every six weeks, and either attend an appropriately rigorous intensive outpatient (IOP) alcohol treatment program for a minimum of twelve weeks or actively participate in Alcoholics Anonymous (AA) for one year. *Id.*

The LSO issued the Individual a letter in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her 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 subsequently conducted an administrative hearing. The LSO submitted fifteen exhibits (Ex. 1–15) into the record. The Individual submitted eight exhibits (Ex. A–H). The Individual presented the testimony of seven witnesses, including herself, and DOE presented the testimony of the DOE Psychologist. Hearing Transcript (Tr.) at 3–4.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “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.”

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<sup>3</sup> A PEth test measures the presence of the PEth molecule, a biomarker of alcohol use, in a subject’s blood. *See* Ex. 12 at 13 (summarizing the alcohol testing performed on the Individual).

Adjudicative Guidelines at ¶ 21. The SSC cited the following allegations as raising security concerns under Guideline G: the Individual was arrested and charged with DUI in 2017; the Individual was arrested and charged with Reckless Driving, Aggravated DWI, Abuse of a Child, and Failure to Notify Owner Upon Striking Fixture or Property in 2018; the DOE Psychologist diagnosed the Individual with AUD, Mild, under the *DSM-5*; and the DOE Psychologist concluded that the Individual habitually consumed alcohol to the point of impaired judgment. Ex. 1 at 1. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work, habitually consumed alcohol to the point of impaired judgment, and was diagnosed with AUD, Mild, justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

### 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 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), cert. denied, 499 U.S. 905 (1991) (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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### IV. HEARING TESTIMONY

A former supervisor of the Individual, who interacted with the Individual on a daily basis for several years until the supervisor's retirement in May 2021, testified that the Individual told her that her security clearance had been suspended as a result of a DWI. Tr. at 15–16, 19–20. The former supervisor testified that she had received training on detecting alcohol misuse as part of her role in the Human Reliability Program, and that she had not observed signs of alcohol abuse in her interactions with the Individual. *Id.* at 13–14, 16–17. The former supervisor testified that the Individual demonstrated reliability, trustworthiness, and good judgment at work. *Id.* at 17–19.

A co-worker who interacts with the Individual daily testified that she had never observed signs of the Individual having been under the influence of alcohol or hung over at work. *Id.* at 26–27. The co-worker also testified that she occasionally interacts with the Individual socially outside of work, including attending dinners and parties where no alcohol was served. *Id.* at 26, 32. The co-worker

testified that the Individual had told her that she was abstaining from alcohol but had not explained her reasons for doing so. *Id.* at 32–33.

The Individual's fiancé testified that he had known the Individual for approximately four years and has resided with her for one and one half years. *Id.* at 37–38. The Individual's fiancé indicated that he and the Individual were devoutly religious and that adherence to the tenants of their faith was of great importance to them. *Id.* at 38–39. The Individual's fiancé testified that he does not consume alcohol and that he and the Individual do not keep alcohol in their home. *Id.* at 40–41. The Individual's fiancé further testified that he had last seen the Individual consume alcohol approximately one and one half years prior to the hearing. *Id.* at 41.

The Individual's fiancé asserted that he had only observed the Individual consume alcohol on special occasions in the past and that he had never observed her consume alcohol to intoxication. *Id.* at 49–50. The Individual's fiancé said that he last observed the Individual consume alcohol in early 2020 on a trip when she consumed one drink. *Id.* at 51–52. The Individual's fiancé testified that he only saw the Individual approximately twice monthly before they moved in together because they resided far apart at that time and that he did not have knowledge of the Individual's drinking habits prior to when they began residing together. *Id.* at 90.

The Individual's fiancé stated that he learned that she was participating in alcohol treatment in early 2020. *Id.* at 87. He also testified that, whether or not she needed the treatment, they jointly agreed that it would be in her best interest to learn more about potential alcohol abuse. *Id.* at 88. The Individual's fiancé indicated that he and the Individual attend a weekly recovery program together at their church. *Id.* at 91.

An occupational medicine counselor (Individual's Counselor) employed at the DOE facility at which the Individual works testified that she has treated hundreds of individuals for alcohol-related conditions for over fifteen years. *Id.* at 55. The Individual's Counselor testified that she met with the Individual individually in late 2017 and early 2018 after the Individual was referred to her for alcohol education following her first arrest for DUI. *Id.* at 58, 64. The Individual's Counselor noted that she recommended to the Individual that she abstain from alcohol at that time. *Id.* at 65.

The Individual's Counselor testified that the Individual returned to her in 2020 for alcohol-related assistance. *Id.* at 58, 60. At the time that she returned to the Individual's Counselor in 2020, the Individual self-reported having abstained from alcohol and made significant changes to her lifestyle to support her sobriety. *Id.* at 60, 62. The Individual completed a six-week alcohol awareness group offered by the Individual's Counselor in 2020 and a twelve-week course on maintaining change in alcohol consumption in 2021. *Id.* at 58–59. In light of the Individual's self-reported changes to her lifestyle, the Individual's Counselor recommended that the Individual continue her existing efforts. *Id.* at 67. The Individual's Counselor testified that she was aware of the DOE Psychologist recommendation that the Individual complete an IOP, but opined that pursuing an IOP would have been costly for the Individual and that she believed that the Individual's other efforts were sufficient to support her recovery. *Id.* at 68–69.

The Individual's Counselor testified that the Individual was an active participant in the two courses in which she enrolled and demonstrated significant growth and learning, such as avoiding triggering places and people and making positive lifestyle changes unrelated to alcohol. *Id.* at 59–

60, 69–70. The Individual’s Counselor testified that the Individual told her that she began abstaining from alcohol in January 2020 and that the Individual’s Counselor believed that the Individual’s ability to make positive changes despite being under stress due to the COVID-19 pandemic and as a result of the adjudication of her eligibility for a security clearance were positive indicators of her ability to sustain her recovery. *Id.* at 61. The Individual’s Counselor opined that the Individual had a “very good” prognosis for maintaining her abstinence from alcohol in the future. *Id.*

The Individual’s Cousin testified that she sees the Individual two to three times weekly through church activities and family gatherings. *Id.* at 105. The Individual’s Cousin also testified that she had observed the Individual consume alcohol on occasion in the past but had not observed the Individual consume alcohol since her 2018 arrest for DWI. *Id.* at 107–08. The Individual’s Cousin indicated that she had never perceived the Individual as abusing alcohol. *Id.* at 111–13.

The Individual testified that both her 2017 DUI and her 2018 DWI charges had been dismissed for failure to prosecute because the arresting officers failed to appear before the court. *Id.* at 120–21. The Individual maintained that she had not driven while intoxicated on either occasion. *Id.* at 154–60. The Individual asserted that she failed a field sobriety test in connection with one of her arrests due to uneven ground and noted that that she had undergone a medical procedure in early 2017, prior to her arrests for DUI, which she believed may have affected her metabolism and therefore caused her to be more sensitive to the effects of alcohol than a typical person. *Id.* at 140–41, 159. The Individual acknowledged that she probably consumed more alcohol in the past than she should have considering her perception that the medical procedure enhanced her sensitivity to the effects of alcohol. *Id.* at 150.

The Individual was required to undergo frequent breath alcohol tests and EtG tests over a period of eight months following her 2018 DWI, all of which were negative for alcohol use. *Id.* at 143–44; Ex. A. The Individual testified that she was required to meet with a clinical psychologist at the DOE site at which she worked eleven times as part of a fitness for duty evaluation from 2018 to 2019. Tr. at 123; *see also* Ex. F at 1 (indicating the dates of the Individual’s meetings with the site psychologist). Following the required meetings, the site psychologist cleared the Individual to return to duty without restrictions. Tr. at 124. The Individual also attended three individual counseling sessions and twelve group counseling sessions from July 2018 to January 2019 through a local counseling organization. *Id.* at 124–26; *see also* Ex. F at 3; Ex. H (commemorating the Individual’s completion of the program); *but see* Ex. 12 at 4 (indicating that the counselor told the DOE Psychologist that the Individual appeared to benefit from the counseling but “appeared fairly defensive” and he did not “really understood the degree of [her] alcohol use”).

The Individual testified that she abstained from alcohol following her 2018 DWI until approximately September 2019. Tr. at 165, 178–79. The Individual said that she had not “grasped enough information” from her counseling in 2018 and 2019 to accept that she should not consume alcohol and that she believed at that time that moderate drinking was permissible. *Id.* at 165–66. The Individual testified that she resumed drinking “slowly” and increased to consuming two to three drinks when out with friends. *Id.* at 165–67. The Individual acknowledged that it was possible that she may have consumed as many as four drinks in one day in December 2019 or January 2020. *Id.* at 182–83.

The Individual reported that she first received the DOE Psychologist's Report in September 2020 and was unaware of his recommendations until that time. *Id.* at 122. After receiving the Report, the Individual obtained six PEth tests from November 2020 to June 2021, all of which were negative for alcohol use. *Id.* at 144–45; *see also* Ex. B. The Individual testified that she considered attending an IOP, as recommended by the DOE Psychologist, but that a limited number of programs were available during the COVID-19 pandemic and she lacked the financial resources to pay for the programs that were available. Tr. at 128. The Individual indicated that she attempted to meet the DOE Psychologist's recommendations by attending an alcohol awareness and education course administered by the Individual's Counselor in October 2020. *Id.*; *see also* Ex. F at 4 (listing the dates of the Individual's attendance). The Individual successfully completed the course. Ex. E. The Individual also completed a twelve-week course on maintaining change in alcohol use administered by the Individual's Counselor. Tr. at 130; Ex. D. The Individual testified that she is currently attending a faith-based recovery program on a weekly basis. Tr. at 132–35.

The Individual testified that her meeting with the DOE Psychologist was a “wake up call” which frightened her into changing her behavior. *Id.* at 139. The Individual testified that she had not consumed alcohol for one and one half years as of the date of the hearing and expressed the intention to abstain from alcohol going forward. *Id.* at 139, 141–42. She also testified that she had learned to “accept ownership and accountability” for her prior DUI charges, gained insight about the effects of alcohol on her family and her finances, and disassociated from friends who did not support her sobriety. *Id.* at 135–37. The Individual further testified that she occupied her time with family and church, and avoided situations in which she might experience urges to consume alcohol. *Id.* at 136. The Individual represented that she would not return to consuming alcohol if she regained her security clearance, despite previously returning to consuming alcohol after a long period of abstinence, because information about alcohol abuse had been presented to her in a new way through the Individual's Counselor and she had personally committed to abstaining from alcohol whereas in the past she perceived that she was being forced to do so. *Id.* at 137–39.

The DOE Psychologist testified that he believed that the Individual had been untruthful in her account of the circumstances leading to her arrests for DUI and in her self-reported alcohol consumption during the clinical interview. *Id.* at 192–94. However, the DOE Psychologist testified that he found the opinion of the Individual's Counselor that the Individual had changed her behavior with respect to alcohol persuasive, and that his diagnosis of the Individual was changed to AUD, Mild, in Full Remission in light of the Individual's eighteen month abstinence from alcohol. *Id.* at 198. Moreover, the DOE Psychologist testified that he deemed the Individual to have satisfied his recommendations for rehabilitation, albeit through an alternative treatment regimen. *Id.* at 198–99. The DOE Psychologist expressed that the Individual's prognosis for avoiding consuming any alcohol in the future was only fair, but that her prognosis for avoiding returning to drinking to intoxication or drinking and driving was very good. *Id.* at 199–200. The DOE Psychologist expressed the opinion that the Individual's prior self-deception and susceptibility to peer pressure put her at risk of a minor relapse. *Id.* at 201–02, 204–05. However, the DOE Psychologist opined that the limited volume of the Individual's prior alcohol abuse, her physiological limitations as a result of the medical procedure, and her capacity for introspection would prevent her from relapsing into consuming alcohol to intoxication or drinking and driving. *Id.* at 205–06.

## V. FINDINGS OF FACT

The Individual was arrested and charged with DUI in September 2017 after failing a field sobriety test. Ex. 11. The Individual was arrested and charged with Aggravated DWI, Abuse of a Child, and Failure to Notify Owner Upon Striking Fixture or Property in June 2018 after failing a field sobriety test. Ex. 9. All the charges against the Individual were dismissed due to lack of prosecution after the arresting officers failed to appear in court. Tr. at 120–21; Ex. 7 at 2.

The Individual met with the DOE Psychologist for a clinical interview on January 17, 2020. Ex. 12 at 3. The Individual provided a sample for a PEth test following the clinical interview and tested positive at 192 ng/mL, which provided strong evidence that the Individual was consuming alcohol on a regular, heavy basis prior to the clinical interview. *Id.* at 8. The DOE Psychologist issued a Psychological Assessment on January 28, 2020, in which he determined that the Individual met the diagnostic criteria for AUD, Mild, under the *DSM-5* and habitually consumed alcohol to the point of impaired judgment. *Id.* at 10. The DOE Psychologist recommended that the Individual abstain from alcohol for at least six months, demonstrate her abstinence from alcohol through weekly EtG tests or PEth tests every six weeks, and either attend an appropriately rigorous IOP alcohol treatment program for a minimum of twelve weeks or actively participate in AA for one year. *Id.*

The Individual completed a six-session alcohol awareness and education class provided by the Individual’s Counselor in December 2020. Ex. E. The Individual completed a twelve-session class on making changes in alcohol use provided by the Individual’s Counselor in March 2021. Ex. D. The Individual attended weekly faith-based recovery meetings beginning in May 2021. *See* Tr. at 91, 132–35 (reflecting the testimony of the Individual and her fiancé as to their attendance of the meetings). The Individual provided samples for six PEth tests; the first on November 13, 2020, and the last on June 4, 2021. Ex. B. Each of the Individual’s PEth tests was negative for alcohol use. *Id.*

After observing the hearing, the DOE Psychologist updated his diagnosis of the Individual to AUD, Mild, in Full Remission. Tr. at 198. The DOE Psychologist further opined that the Individual had a “very good” prognosis for avoiding returning to problematic alcohol consumption. *Id.* at 199–200.

## VI. ANALYSIS

The Individual did not contest the allegations contained in the SSC but argued that she had mitigated the security concerns by abstaining from alcohol, pursuing counseling, and making positive lifestyle changes that would aid her in abstaining from alcohol in the future. An individual can mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;

- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)–(d).

The first mitigating condition under Guideline G is inapplicable because the Individual’s arrests for DUI and DWI and the DOE Psychologist’s determination that the Individual met the diagnostic criteria for AUD are too recent for me to conclude that the passage of time mitigates the security concerns arising from the Individual’s conduct. *Id.* at ¶ 23(a). The second mitigating condition under Guideline G is inapplicable because the Individual’s implausible excuses for her arrests and the positive PEth test administered at the request of the DOE Psychologist are indicative of a refusal to fully acknowledge her past pattern of maladaptive alcohol use. *Id.* at ¶ 23(b). The third mitigating condition under Guideline G is not applicable because the Individual is not currently pursuing a formal counseling or treatment program. *Id.* at ¶ 23(c).

Regarding the fourth mitigating condition under Guideline G, the Individual successfully completed courses on alcohol awareness and maintaining changes in alcohol use with the Individual’s Counselor and attended faith-based recovery classes. The DOE Psychologist opined that the Individual’s treatment regimen satisfied his recommendations. The Individual also complied with the DOE Psychologist’s recommendations for alcohol testing by undergoing six PEth tests from November 2020 to June 2021, all of which were negative for alcohol use. Moreover, the DOE Psychologist gave the Individual a positive prognosis for avoiding returning to problematic alcohol consumption. As the Individual complied with the DOE Psychologist’s recommendations, albeit through an alternative treatment regimen, and established more than the six months of abstinence recommended by the DOE Psychologist through PEth tests, I find that the Individual has demonstrated the applicability of the fourth mitigating condition under Guideline G. *Id.* at ¶ 23(d).

The DOE Psychologist testified that the Individual’s AUD is in full remission and that she has a “very good” prognosis for avoiding a return to problematic alcohol consumption. The Individual’s Counselor likewise provided a “very good” prognosis for the Individual to avoid returning to problematic alcohol consumption. The Individual testified that she abstained from alcohol for approximately eighteen months as of the date of the hearing, demonstrated over six months of abstinence from alcohol consumption through PEth testing, and explained that her classes with the Individual’s Counselor caused her to develop a deeper understanding of alcohol misuse that will help her avoid returning to problematic alcohol consumption as she did in the past. For these reasons, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline G.



## **VII. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all of 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 set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals