

underwent two types of alcohol testing: an Ethyl Glucuronide (EtG) test, which was positive at a level of 14,624 ng/mL, and a Phosphatidylethanol (PEth) test, which was positive at a level of 119 ng/mL. The DOE Psychologist ultimately concluded that the Individual was using alcohol to excess and was binge consuming alcohol frequently to the point of impaired judgment. *Id.* at 4. He further opined that the Individual had not established adequate evidence of rehabilitation or reformation. *Id.*

Due to unresolved security concerns, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 2.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. *Id.* The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted twelve numbered exhibits (Ex. 1–12) into the record and presented the testimony of the DOE Psychologist. The Individual submitted two exhibits (Ex. A–B) into the record, and he presented his own testimony.³ The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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).

³ Exhibit A is a Letter of Support from the vice president of the company with which the Individual is employed. Exhibit B is a January 22, 2024, negative PEth test.

Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated 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 specifically cites Guideline G and Guideline E of the Adjudicative Guidelines. Ex. 1. Guideline G 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 cited the Individual's December 2022 DWI as well as his admission in the March 2023 LOI that he purchased three alcoholic beverages "for the ride home," which he consumed while driving. Ex. 2 at 2. The LSO additionally cited the Individual's positive EtG and PEth test results, the DOE Psychologist's July 2023 determination that the Individual habitually or binge consumes alcohol to the point of impaired judgment, and the DOE Psychologist's opinion that the Individual had not established adequate evidence of rehabilitation or reformation. *Id.* at 1. It also cited the DOE Psychologist's concern that the Individual purchased alcohol with the intent to consume it while he was driving and that he proceeded to consume it while driving. *Id.* at 1–2.

Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct "can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." *Id.*

In citing Guideline E, the LSO asserted that the Individual "failed to timely report his December 2022 [DWI] and provided false or misleading information regarding his alcohol consumption." Ex. 2 at 3. Specifically, it cited the Individual's admission in his June 2023 LOI that he delayed reporting the DWI because "he was expecting bad news, was concerned about everyone on [the work]site finding out about it, and that it would have a negative effect on his clearance." *Id.* The LSO additionally cited the Individual's admission in his June 2023 LOI that he underreported his alcohol consumption in his March 2023 LOI "because he loves his job and did not want to lose it." *Id.*

IV. Findings of Fact

As stated above, the Individual completed two LOIs following the February 2023 report of his December 2022 DWI. Ex. 7–10. In the March 2023 LOI, he stated that he typically consumed "maybe 2 or 3 [alcoholic] seltzers at on[e] time" and he typically consumes "maybe once or twice every two weeks." Ex. 8 at 2. However, in the June 2023 LOI, when confronted about discrepancies between his reported alcohol consumption and his breathalyzer results from the December 2022 DWI, the Individual stated that he underreported his alcohol consumption because he "love[s his] job and did not want to" lose it. Ex. 10 at 1. He then clarified that he did "not have

a set drinking amount[,]” but on “[s]ome bad days[,]” he would consume “maybe 3 days a week and 3 drinks.” *Id.*

In completing the LOIs, the Individual disclosed that, on the day of the DWI, he had been visiting his mother who lived approximately three hours from his home. *Id.* at 1; Ex. 10 at 2. According to the Individual, he and his mother argued, and he was upset by the interaction. Ex. 8 at 1. On his drive home, he stopped at a store and purchased three alcoholic seltzers “for the ride home.” *Id.* The Individual stated that he consumed the seltzers in the truck, the last of which he finished just prior to hitting another car. *Id.* The Individual was subsequently arrested for DWI and his breathalyzer test measured at .17. *Id.* at 4.

The Individual stated that he delayed reporting his DWI to the LSO because he “was scared about reporting it[,] and [he] was worried about telling someone who might say something to the wrong people.” *Id.* at 1. He elaborated explaining that he was worried that his colleagues would find out about his DWI and, due to competition at the worksite, would “use it against” him. Ex. 10 at 1. The Individual stated that he was concerned that reporting the arrest would have a negative impact on his clearance. *Id.* at 2.

Following the LOIs, the Individual underwent a psychological evaluation with the DOE Psychologist who produced a report (Report). Ex. 4. As part of the evaluation, the Individual underwent an EtG and a PEth test. *Id.* at 3. The Individual’s EtG was positive with a result of 14,624 ng/mL, which the DOE Psychologist noted was “considerably elevated” and “suggest[ed] that [the Individual] consumed a significant amount of alcohol within the 96 hours prior to” the test. *Id.* The Individual’s PEth test was positive at a level of 119 ng/mL, which led the DOE Psychologist to opine that the Individual was “consuming alcohol at a rate that is found in people who drink about two or more drinks per day or who will occasionally binge drink alcohol.” *Id.* The DOE Psychologist concluded that it “appear[s] that [the Individual] is binge drinking alcohol more than twice per month and this suggests that he is drinking ‘habitually to excess[.]’” *Id.* The DOE Psychologist noted that he was “very concerned about the fact that [the Individual] reported that he purchased alcohol specifically for the purpose of drinking while he was driving home.” *Id.* He stated: “It is a very poor decision to drive after having consumed alcohol, but to purchase alcohol with the stated intention of drinking a significant amount while he was driving . . . is even worse.” *Id.* at 4.

The DOE Psychologist ultimately concluded that the Individual did not provide enough accurate information to enable him to diagnose an alcohol use disorder. *Id.* However, he opined that the Individual was exercising poor judgment in his use of alcohol and was frequently binge-consuming and using alcohol to excess, such that his alcohol use likely had a negative impact on his judgment, reliability, trustworthiness, and stability. *Id.* The DOE Psychologist determined that the Individual had not established adequate evidence of rehabilitation or reformation, and in order to establish such, he recommended that the Individual remain abstinent from alcohol for a period of twelve months. *Id.* at 5. He recommended that the Individual undergo EtG and PEth testing at least every two months, and he further recommended that the Individual enroll in a certified outpatient alcohol treatment program and fulfill any aftercare requirements. *Id.* Alternative to the outpatient treatment program, the DOE Psychologist noted that the Individual could attend Alcoholics Anonymous

(AA) meetings at least three times per week for a period of twelve months and keep records of his attendance. *Id.*

V. Hearing Testimony

At the hearing, the Individual testified, and consistent with his narrative in the LOIs, he explained the circumstances that led to his December 2022 DWI. Tr. at 22–28. Describing his pattern of alcohol consumption following the arrest, the Individual stated that he “stayed home and had a few extra because it was pretty traumatic.” *Id.* at 33–34. He stated that, then, he realized, “I got to get my act together. So I drank less. And then when I lost my clearance, I quit.” *Id.* at 34. The Individual testified that, in late October 2023, he learned through his employer that his clearance had been suspended. *Id.* at 34, 40. He stated that upon receiving that news, he stopped consuming alcohol. *Id.* at 40.

Shortly thereafter, he received the Report with the Notification Letter. *Id.* at 40. After reading the Report with the DOE Psychologist’s recommendations, the Individual stated, “the first thing I did was I quit drinking. And then I was going to enroll in AA about a month or two into it, and then I was like, all right, I[’ll] do everything.” *Id.* at 41. He stated that he had not undergone any PEth testing, but he started attending AA approximately three weeks prior to the hearing.⁴ *Id.* at 42. The Individual testified that he attends “[e]very Saturday,” but he missed one Saturday meeting in the prior three weeks because he adopted a dog. *Id.* He stated that, although he does not have a sponsor and does not have the “urge” to get one, he intends to “just . . . keep going.” *Id.* at 42, 62. When asked about his experience in AA, he stated: “I go and I sit and I listen, but I really don’t have . . . , after I told them, you know, what happened, I really didn’t . . . have anything to say.” *Id.* at 44. Nonetheless, he explained that he was “definitely . . . getting something out of it.” *Id.* at 45.

The Individual acknowledged that he has “a problem or issues with alcohol” and testified that he does not put himself in situations where he would be tempted to consume alcohol, such as going to parties or bars. *Id.* at 43, 46. The Individual acknowledged that he found the holidays challenging because “everybody else was drinking and I wasn’t.” *Id.* at 62. He stated that he coped by going to “areas with the least amount of people drinking and just deal with it.” *Id.* The Individual further recognized that stressful situations are a potential trigger for him to consume alcohol. *Id.* at 50. He stated that if he is triggered, he will “just deal with it.” *Id.*

The Individual stated that despite the DOE Psychologist’s recommendation that he abstain from alcohol for one year, his intention is to abstain for as long as he holds a security clearance. *Id.* at 45. Regarding counseling, the Individual stated that he attended a victim’s impact class once per week, for six weeks, in order to reinstate his driver’s license, and he additionally attending a six-week court ordered alcohol awareness class. *Id.* at 47–48. However, he noted that he had not attended any individual counseling. *Id.* at 48.

Although the Individual could not recall the “exact date” that he reported the DWI, he testified that he “waited a little bit,” approximately six weeks, because he “didn’t know what to do” as he

⁴ Following the hearing, the Individual submitted the results of a negative PEth test, which he underwent five days after the hearing. Ex. B.

has “friends that are friends with the security and whenever anything happens somehow everybody knows.” *Id.* at 28, 85. He elaborated stating, “a lot of these guys will use it against you and I didn’t want any of them to know and I was worried.” *Id.* When asked about what he meant in the LOI when he expressed concern about the “wrong people” finding out about his DWI, the Individual explained that there are “a lot of jobs that aren’t too hard and everybody wants to be the last to be let go. And so the more dirt and the more things they can get on you, they’ll use it against you.” *Id.* at 30.

The Individual testified that when he decided to report his DWI, his employer gave him a phone number for the LSO. *Id.* at 57. However, when he called to report the DWI, no one answered the phone. *Id.* As such, he sent an email to the LSO, and two weeks elapsed before he received a response. *Id.* at 29, 57.

In reference to his response on the June 2023 LOI that he underreported his alcohol consumption, the Individual testified that he did not underreport his alcohol consumption because he was worried about losing his clearance. *Id.* at 31; *see* Ex. 10 at 1. Rather, he underreported his alcohol consumption because he was worried about ensuring that people would not “gossip and stuff[.]” such that “people that were involved with maybe influence and hiring and firing” would find out. *Id.* at 32.

The DOE Psychologist testified after hearing the Individual’s testimony. The DOE Psychologist explained that, after evaluating the Individual, he did not have adequate information regarding the Individual’s alcohol use because, after receiving the laboratory results, it became clear to him that the Individual “was drinking much more than it appeared initially.” *Id.* at 77. As such, he could not diagnose him with an alcohol use disorder. *Id.* Nonetheless, the DOE Psychologist noted that he was concerned about the Individual’s drinking patterns and his use of alcohol to cope with stress, resulting in the Individual’s “decision to drink more than he probably should have.” *Id.* at 77–78. He expressed particular concern about the Individual’s “active decision to purchase alcohol” with the intention of “drink[ing] the alcohol while he was driving home.” *Id.* at 78.

The DOE Psychologist testified that he had no reason to doubt that the Individual had been abstinent from alcohol “over the past few months.” *Id.* at 79. However, he expressed concern that, at the time of the hearing, the Individual had only attended two AA meetings, which he noted provided little indication for how the Individual will manage abstinence over time. *Id.* at 78–79. The DOE Psychologist additionally expressed concern regarding the Individual’s “just deal[.] with it” approach to abstinence from alcohol, stating that “you can’t do it on your own” and “there’s a big difference between abstinence and sobriety.” *Id.* at 78–79, 87. The DOE Psychologist opined that, because the Individual was in early recovery, he was not aware of the “kinds of tools and skills that [he] need[s] to maintain sobriety.” *Id.* at 86. The DOE Psychologist worried that the Individual thought that the “hard part” was done, when, in actuality, he had only just begun the process of addressing his issues with alcohol. *Id.* As such, the DOE Psychologist gave the Individual a prognosis of “low to fair” if he continued “to do what he’s doing[.]” *Id.* at 85.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not mitigated the security concerns cited by the LSO under Guideline E and Guideline G of the Adjudicative Guidelines. Therefore, I find that the Individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

A. Guideline G

Conditions that may mitigate a Guideline G security concern 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 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.

Here, the Individual was arrested for DWI, and the DOE Psychologist subsequently determined that the Individual habitually or binge consumed alcohol to the point of impaired judgment. He recommended that the Individual remain abstinent from alcohol and engage in AA for a period of twelve months. At the time of the hearing the Individual had been abstinent from alcohol for approximately three months and had only attended two AA meetings. Given the short period of time that the Individual has been abstinent from alcohol and participating in AA, I cannot find that he has mitigated the security concern pursuant to mitigating factor (d). *Id.* at ¶ 23(d).

The Individual has acknowledged his maladaptive alcohol use, and I have no reason to doubt that the Individual has been abstinent from alcohol since late October 2023 and has attended two AA meetings. However, the Individual has yet to establish regular and consistent attendance in AA, and he has not yet obtained a sponsor. As such, I cannot find that he is actively participating in the

program. Thus, I cannot find that the Individual has mitigated the Guideline G security concerns pursuant to factors (b) and (c). *Id.* at ¶ 23(b), (c).

Finally, although the Individual's DWI occurred over a year prior to the hearing, being that the Individual has not yet adequately addressed the concerns related to his alcohol consumption, for the reasons stated above, I cannot find that the DWI or the Individual's problematic alcohol consumption occurred so long ago, so infrequently, or under such unusual circumstances that they are unlikely to recur or do not cast doubt on the Individual's current reliability, trustworthiness, or judgment. *Id.* at ¶ 23(a).

For the foregoing reasons, I cannot find that the Individual has mitigated the Guideline G concerns.

B. Guideline E

Conditions that may mitigate a Guideline E security concern include:

- a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- f) The information was unsubstantiated or from a source of questionable reliability; and,
- g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

1. Delay in Reporting DWI

The Individual admitted that he waited approximately six weeks to report his December 2022 DWI as he feared that people at his worksite would find out and this information would impact his job security. Although the Individual reported the DWI prior to being confronted with it, I cannot find that his disclosure was prompt. DOE requires that clearance holders report arrests and criminal charges to the appropriate security office “immediately, but in no event later than three (3) working days after the occurrence.” DOE Order 472.2A, Personnel Security, Attachment 5. As such, I cannot find that the Individual mitigated the security concern pursuant to factor (a). Adjudicative Guidelines at ¶ 17(a).

Although approximately one year has passed since the Individual failed to promptly report the DWI, and it could be argued that the delay was a relatively minor offense, I cannot find that the delayed reporting occurred under such circumstances that it is unlikely to recur and does not cast doubt on the Individual’s reliability, trustworthiness, or good judgment. The Individual provided a detailed explanation of the concerns he had regarding gossip and underhanded behavior among his colleagues should they discover derogatory information about one another. There is nothing in the record to assure me that Individual has done anything to address this behavior with his supervisors or otherwise assuage his fears. As such I am not convinced that, should the Individual need to disclose derogatory information to DOE in the future, he will do so promptly and in good faith. For this reason, I cannot find that he has mitigated the security concern pursuant to factor (c). *Id.* at ¶ 17(c).

The remaining mitigating factors are inapplicable to the circumstances of this situation. *Id.* at ¶ 17 (b), (d), (e), (f), and (g).

2. Underreporting Alcohol Use

In the June 2023 LOI, when confronted with conflicting information, the Individual admitted to underreporting his alcohol consumption out of fear of losing his job. As such, I cannot find that the Individual satisfied mitigating factor (a), because his admission was not prompt and made in good faith. *Id.* at ¶17(a). Although nearly a year has passed since the Individual misrepresented his alcohol consumption and he has begun to address his alcohol issues through abstinence and participation in AA, I cannot find that this misrepresentation occurred under such circumstances that it is unlikely to recur and does not cast doubt on the Individual’s reliability, trustworthiness, or good judgment. As with his delayed disclosure of the DWI, the Individual stated that he misrepresented his alcohol consumption out of fear of his colleagues discovering the information. As stated above, there is nothing in the record to assure me that Individual has done anything to alleviate his fears. Furthermore, although he has begun to abstain from alcohol and sought counseling through AA to address the alcohol issues that led to the misrepresentation, as of the date of the hearing he had only be abstinent for approximately three months and had only attended two AA meetings. As such, I cannot find that the Individual has satisfied mitigating factors (c) or (d). *Id.* at ¶ 17 (c), (d).

The remaining mitigating factors are inapplicable to the circumstances of this situation. *Id.* at ¶ 17(b), (e), (f), and (g).

For the foregoing reasons, I cannot find that the Individual has mitigated the Guideline E concerns.

VII. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline E and Guideline G. 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 in 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals