

had consumed alcohol prior to the incident which led to this accusation. Ex. 9 at 5. On January 26, 2017, police arrested and charged the Individual with public intoxication. Ex. 9 at 5. The Individual admitted he had consumed approximately five alcoholic “drinks” prior to this arrest. Ex. 10 at 4. On March 17, 2018, police charged the Individual with Failure to Maintain Lane Control. Ex. 9 at 4. The Individual admitted to consuming “approximately two to three [alcoholic] drinks” prior to the incident which led to this charge. Ex. 10 at 4.

On September 21, 2023, police arrested and charged the Individual with Driving While Intoxicated (DWI). Ex. 7 at 1, 6; Ex. 10 at 3. The Individual admitted he had consumed at least “eight to nine [light] beers” and “three to four shots of [liquor]” prior to this arrest. Ex. 10 at 3. His Blood Alcohol Content (BAC) at the time of the arrest was .12 percent. *Id.*

After the Individual reported this incident to the Local Security Office (LSO), the LSO issued a Letter of Interrogatory (LOI) to the Individual. The LOI asked the Individual about his current alcohol consumption. The Individual responded by stating that he had not used alcohol since September 23, 2023. Ex. 9 at 6–7. The Individual admitted that he is a binge drinker but denied that he had a problem with alcohol and that he needed alcohol counseling or treatment. Ex. 9 at 7, 10. He did admit that he had previously attended the military’s “version of AA.” Ex. 9 at 11.

On December 8, 2023, the Psychologist conducted a clinical interview (CI) of the Individual. Ex. 10 at 1. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s personnel security file, administered the Personality Assessment Inventory (PAI) to the Individual, and had him undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 10 at 8. The Individual’s PEth test was negative, and his PAI results did not indicate elevations of any clinical scales, except the validity scales which indicated that the Individual did not respond to questions in a completely forthright manner. Ex. 10 at 8–9. On December 11, 2023, the Psychologist also contacted the Individual’s substance abuse therapist (Therapist), who would later supervise the IOP that the Individual would attend. Ex. 10 at 6. The Therapist reported that the Individual met the criteria for AUD, Mild or Moderate. Ex. 10 at 6. The Therapist described the Individual as “exceedingly engaged in therapy, genuine, and conscientious.” Ex. 10 at 6. The Therapist further reported that the Individual was going to begin the IOP later that same day. Ex. 10 at 6. He further reported that he had referred the Individual to a trauma specialist (Trauma Specialist) because the Individual’s “response to the . . . accusation of Sexual Assault appeared traumatic.” Ex. 10 at 67. The Psychologist also contacted the Trauma Specialist who informed him that he was counseling the Individual for “trauma related to his military service,” specifically, the three years the Individual was under accusation for Sexual Assault without resolution. Ex. 10 at 7. The Trauma Specialist also stated that the Individual “is an active participant in therapy, that he is willing to address his distress, and is ‘accepting the consequences of his actions.’” Ex. 10 at 7. The Psychologist reported that the Trauma Specialist diagnosed the Individual with AUD, Moderate, and with Post Traumatic Stress Disorder (PTSD).² Ex. 10 at 7–9.

During the CI, the Individual made several statements relevant to the issues at bar. He stated that he had consumed approximately six “mixed drinks of [liquor and soda]” prior to the incident which resulted in the sexual assault charges against him. Ex. 10 at 4. The Individual denied having

² The Psychologist opined that the Individual did not meet the criteria for PTSD. Ex. 10 at 9.

committed sexual assault, claiming that he had consensual sex with his accuser.³ Ex. 10 at 4. The Individual also reported that the medical staff at his employer had advised him that he is a “binge drinker.” Ex. 10 at 5. The Individual stated that he last used alcohol on September 23, 2023. Ex. 10 at 5. The Individual acknowledged that his alcohol use had negatively impacted his personal life, professional life, and emotional health. Ex. 10 at 11.

The Psychologist issued the Report on December 17, 2023, in which he found that the Individual met sufficient criteria for a diagnosis of AUD, Moderate, in early remission. Ex. 10 at 9–10. He further noted that the Individual’s insight was “poor.” Ex. 10 at 8. The Psychologist noted that the Individual had taken several positive steps towards addressing his AUD: the Individual had begun individual counseling treatment and was scheduled to begin an IOP in the near future. Ex. 10 at 5. The Psychologist further noted that the Individual’s December 8, 2023, PEth test was negative, supporting his claim that he had been abstaining from alcohol use. Ex. 10 at 8.

The Psychologist opined that, to show that he was reformed, the Individual should remain abstinent for two years and document such abstinence with monthly PEth tests. Ex. 10 at 11. The Psychologist further opined that, to show adequate evidence of rehabilitation, the Individual should: (1) “maintain[] enrollment in an IOP”; (2) “consistently engage in aftercare support for one year”; and (3) take monthly PEth tests. Ex. 10 at 11.

After receiving this information, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it received derogatory information that created a substantial doubt regarding his eligibility to hold a security clearance and that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. See 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his spouse, his coworker (Coworker), his present supervisor (Supervisor), the Therapist, and the Psychologist. See Transcript of Hearing, OHA Case No. PSH-24-0084 (hereinafter cited as “Tr.”). The DOE Counsel submitted thirteen exhibits, marked as Exhibits 1 through 13. The Individual submitted the following seven exhibits, marked as Exhibits A through G:

Exhibit A is a Certificate of Completion for the IOP, dated February 8, 2024.

Exhibits B, C, D, E, and G are laboratory test reports for PEth tests administered to the Individual on June 21, 2024, May 21, 2024, April 30, 2024, April 1, 2024, and February 28, 2024. Each of these five tests were negative.

Exhibit F is a copy of the Therapist’s resume or CV.

³ In his response to the LOI, the Individual denied that he had been charged with Sexual Assault on May 3, 2016, and instead asserted that he had been only “accused.” Ex. 9 at 5. In the Report, however, the Psychologist stated that the charges against the Individual had been dropped on March 22, 2018. Ex. 10 at 4. It is unclear from the Report whether the Psychologist obtained this information from the Individual or from his review of the Individual’s personnel security file.

II. The Summary of Security Concerns

The Summary of Security Concerns (SSC) attached to the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Under Guideline G, the LSO cites the Psychologist's conclusions that the Individual met sufficient criteria for a diagnosis of AUD, Moderate, under the DSM-5-TR, and "habitually or binge consumes alcohol to the point of impaired judgment." Ex. 1 at 1. The LSO further cites the Individual's alcohol-related criminal activity. Ex. 1 at 1. This information adequately justifies the LSO's invocation of Guideline G. Under Guideline G, "[e]xcessive 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work . . ." and "diagnosis by a duly qualified medical or mental health professional (e.g. . . . clinical psychologist . . .) of alcohol use disorder." Adjudicative Guidelines at ¶ 22(b), (d).

The SSC also states that the Individual's criminal activity created substantial doubt concerning his eligibility for a security clearance under Guideline J. Under Guideline J, the LSO cites the Individual's history of four incidents involving law enforcement, including three arrests. Ex. 1 at 2. These allegations adequately justify the LSO's invocation of Guideline J. The Adjudicative Guidelines state: "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness." Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is "[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Adjudicative Guidelines at ¶ 31(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 *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 their 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. 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

At the hearing, the Individual's wife testified on his behalf. She testified that the Individual took responsibility for his actions and was determined to address the concerns raised by his DWI arrest. Tr. at 14–15. The last time she observed the Individual consuming alcohol was on their wedding night in September 2023. Tr. at 15. The Individual told her that he is going to remain sober going forward. Tr. at 16–17. She still uses alcohol around the Individual, very occasionally. Tr. at 17. His friends and family support his decision to remain sober. Tr. at 18, 31. She testified that the Individual has matured and become more responsible since he became sober. Tr. at 19. He has also become more open with her. Tr. at 19. The Individual seems comfortable with his sobriety. Tr. at 21. Since he became sober, he has been less self-centered. Tr. at 23–24. The Individual appeared to have enjoyed attending the IOP and to have learned a lot from it. Tr. at 24–25. He would often discuss the subject matter of the IOP lessons with her. Tr. at 25. The Individual attends Aftercare twice a week. Tr. at 25. The Individual enjoys Aftercare. Tr. at 25. The Individual is committed to remaining sober permanently. Tr. at 26–27, 30. They do not keep alcohol in their home. Tr. at 29.

The Supervisor, a longtime friend of the Individual's family, testified on his behalf at the hearing. He testified that the Individual is a good, dependable employee and that the Individual told him that he "was done drinking alcohol." Tr. at 36, 40.

The Coworker testified on the Individual's behalf at the hearing. He testified that he and the Individual are friends and socialize outside of work. Tr. at 47. He has not observed the Individual using alcohol since last September. Tr. at 48. The Individual admitted that he has an alcohol problem to the Coworker. Tr. at 49. The Individual told him about his treatment and expressed how productive it has been for him. Tr. at 49. The Individual feels like he is on a good path now. Tr. at 49. He noticed that the Individual is now calmer. Tr. at 50. He testified that the Individual is "a good man, [] an honest man, and [he] trust[s] him." Tr. at 51. The Coworker testified that the Individual told him that "he no longer wants to drink anymore" and no longer wants to have alcohol in his life. Tr. at 51–52, 54.

The Individual testified that the information appearing in the Psychologist's Report is accurate and that he agrees that he has an "alcohol problem." Tr. at 59, 83. The Individual testified that he does not intend to consume alcohol in the future, since he fears that if he does, he will "lose everything." Tr. at 60. The Individual indicated that his September 2023 DWI charge is still pending, but stated that he hired a lawyer to "get [the matter] settled or some kind of closure." Tr. at 61. After that arrest, he began individual counseling. Tr. at 64. Initially, his counseling focused on trauma that the Individual had experienced in his past, arising from a two-and-a-half-year investigation of the sexual assault allegation. Tr. at 65. He testified that he was having trouble dealing with the stigma of that investigation. Tr. at 65–66. He also felt discouraged due to career disappointment. Tr. at 66–67. He testified that therapy was a very positive experience for him. Tr. at 68. He discontinued individual counseling after a while because of financial constraints. Tr. at 69. He then attended an IOP. Tr. at 70. He testified that he learned a lot about himself and alcohol's effects on him. Tr. at 71. The IOP helped him understand that he could not use alcohol again. Tr. at 71. Before

the IOP, he thought his drinking behavior was normal; after the IOP, he realized that it was not. Tr. at 72. After the IOP, he restarted individual therapy. Tr. at 72–73. He now realizes that alcohol was not helping him cope with his past trauma and in fact made those issues worse. Tr. at 76. He now has a great diet, sleeps well, and communicates effectively with his wife. Tr. at 77. He is now happy. Tr. at 77. He attends Aftercare twice a week. Tr. at 78. He has a good support group, including his wife, his family, his friends, and the other IOP attendees. Tr. at 79, 93. The last time he consumed alcohol was September 23, 2023. Tr. at 81, 91. He has taken several PEth tests; the last one was on June 21, a few days before the hearing. Tr. at 82; Ex. G. His friends now understand that he cannot use alcohol, and they respect his decision. Tr. at 90. They no longer get intoxicated in his presence. Tr. at 93.

When asked, the Individual equivocated as to whether or not he was actually charged with Sexual Assault in 2016 as alleged. Tr. at 62–63, 98–101. He indicated that he had hired an attorney to remove this charge from his military records before the present access authorization investigation, but had to “again prioritize funds and push it towards [the current access authorization process].” Tr. at 98–99. He stated that he plans on “reinstating [his] prior lawyer,” and assumes the charge will be removed from his record. Tr. at 99.

The Therapist, who first began seeing the Individual in October 2023, testified that he is a licensed professional counselor. Tr. at 107; Ex. 10 at 6. The Therapist testified that the Individual took accountability for his actions and worked hard to address them. Tr. at 123. The Individual understands that using alcohol would harm him and is now “scared of alcohol.” Tr. at 125–126. Being sober has changed the Individual, he is now calmer and focused on maintaining his sobriety. Tr. at 126. The Individual’s father, who is very influential in his life, is newly sober. Tr. at 127. The Individual is very close to his family and loves them. Tr. at 128. The Individual is ashamed of what he has put them through. Tr. at 128. He is very motivated to maintain his sobriety and has the tools necessary to do so. Tr. at 128–129.

The Therapist testified that a DOE psychologist had informed him that the Individual might have a “trauma history related to his . . . service history and the accusations that he endured.” Tr. at 108. The Therapist had the Individual attend individual counseling for this trauma with the Trauma Specialist before the Individual began the IOP. Tr. at 110. The Therapist is the program director of the IOP attended by the Individual. Tr. at 112. The Individual “jumped right into therapy.” Tr. at 113. He observed that the Individual developed friendships with other IOP participants. Tr. at 117. The Individual sold his motorcycles to pay for the IOP. Tr. at 122. After the Individual completed the IOP he began attending Aftercare twice a week. Tr. at 120. He believes that the Individual is “able to build a pretty strong sober life, with just one or two points of contact with a group.” Tr. at 121. He further opined that the Individual needs to continue with his individual therapy. Tr. at 121. The Therapist testified that the Individual has a favorable prognosis. Tr. at 130. The Individual has achieved long-term sobriety. Tr. at 132. His AUD is now in early remission, just a few months short of being in sustained remission. Tr. at 132. The Individual did not have the intensity and frequency of use that would put him in the “high-risk detox group.” Tr. at 134. The Individual completely complied with his treatment plan, which included attending individual counseling sessions with the Trauma Specialist, the IOP, Aftercare twice per week, and monthly individual therapy sessions with the Therapist. Tr. at 110, 120–121, 135–136. The Individual attends individual counseling monthly. Tr. at 136.

The Psychologist testified after observing the testimony of the other witnesses. He testified that after reviewing the documents in the record and hearing the other witnesses' testimony, he believes the Individual has shown adequate evidence of rehabilitation.⁴ Tr. at 141–144. The Psychologist explained that, although he had originally recommended one year of Aftercare, he now believes that the totality of the Individual's nine months of treatment demonstrates rehabilitation because of the "degree of commitment" the Individual has shown. Tr. at 147. He noted that the Individual has fully invested in, and committed himself, to the IOP; is committed to his individual therapy; is attending Aftercare twice a week when once a week would be sufficient; and is "doing a better job of communicating about his sobriety" with his wife. Tr. at 144–145. These actions show his commitment to maintaining his abstinence and sobriety. Tr. at 144. His improvement of communication with his wife and ability to discuss stressors with a professional, such as the Therapist, additionally increases the chance that he will maintain his sobriety. Tr. at 144–145. The Psychologist further noted that the financial sacrifices the Individual has made to continue attending Aftercare and individual therapy sessions is "a sign of really being able to look at the long picture" and an indication that therapy is working for him. Tr. at 149. The Psychologist opined that the Individual's prognosis is "really positive." Tr. at 147.

V. Analysis

A. Guideline G

The Individual claims, and the record supports, that at the time of the hearing, he had abstained from alcohol use for nine months. Therefore, he has clearly established a pattern of abstinence. In addition, the Individual has complied with the Psychologist's treatment recommendations, with one exception. The Psychologist recommended that the Individual abstain from alcohol use for two years, while, at the time of the hearing, the Individual had only abstained from alcohol use for nine months. The recommendations included his attendance at and completion of an IOP. The Therapist indicates that the Individual was highly engaged in that program and completed it in a highly satisfactory manner. The Individual's and Therapist's hearing testimony has convinced me that the Individual fully understands the effect that alcohol has had on his life, the threat it poses to his future, and the importance of maintaining his sobriety. Most importantly, the Individual's testimony, and that of the other witnesses at the hearing, have convinced me that the Individual is fully committed to maintaining his sobriety and permanently abstaining from alcohol use. Furthermore, it is evident that the Individual has a strong support group in place to help maintain his sobriety, including his wife, his family, his friends, the Therapist, and the IOP/Aftercare attendees. And the Individual is also receiving continuing treatment, including two Aftercare meetings per week and a monthly meeting with the Therapist. For these reasons, I find the Individual's demonstrated nine months of sobriety is sufficient for purposes of mitigation, notwithstanding that it does not fully comply with the Psychologist's initial recommendation.

The Adjudicative Guidelines set forth four conditions that may mitigate security concerns under Guideline G. Two of the four mitigating conditions are present in the instant case. First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if "[t]he individual acknowledges his or her pattern of maladaptive alcohol use,

⁴ The Psychologist further stated that his two-year abstinence recommendation remained unchanged and noted that the Individual has not been sober for a sufficiently long time to establish "reformation." Tr. at 146.

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.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has fully acknowledged the extent of his alcohol problem, has taken the appropriate actions to overcome this problem, such as attending individual counseling and the IOP, and has demonstrated a clear and established pattern of abstinence. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(b).

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual has completed the IOP, is engaged in individual substance abuse counseling, and is regularly attending Aftercare. Moreover, the record shows that these programs have been highly effective since the Individual has been abstaining from alcohol use for nine months and intends to continue doing so. Accordingly, I find the Individual has satisfied the mitigating condition set forth at ¶ 23(c).

I therefore find that the Individual has resolved the security concerns raised under Guideline G by his AUD diagnosis and alcohol-related legal incidents by establishing the presence of two mitigating conditions set forth in Guideline G.

B. Guideline J

Each of the criminal concerns cited in the SSC have one thing in common: they involve alcohol. The Individual’s criminal activity was clearly symptomatic of his AUD. Because the Individual has shown that his recovery from his AUD can be sustained, I am convinced that the risk that the Individual will engage in future criminal activity is minimal.

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns arising under Guideline J, one of which is relevant to the present case. Namely, an individual may mitigate security concerns under Guideline J if they can show that “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” Adjudicative Guidelines at ¶ 32(a). All of the criminal incidents cited in the SSC occurred in circumstances where the Individual was under the influence of alcohol. As explained previously, the Individual has shown adequate evidence of rehabilitation with respect to his AUD, and I am convinced that this can be sustained. Therefore, the Individual’s AUD is a circumstance that is no longer present. Accordingly, I find that the Individual’s criminal conduct happened under such circumstances that it is unlikely to recur and does not cast doubt on the Individual’s reliability, trustworthiness, or good judgment. Furthermore, with respect to the Individual’s 2016 sexual assault charge, although the record is not sufficiently clear for me to adequately assess the Individual’s culpability, whether any criminal charges were filed, and if so how they were resolved, I nonetheless find that the passage of time (more than eight years) mitigates any security concerns associated with this incident. For these reasons, I find that the mitigating conditions set forth in ¶ 32(a) are present for each of the criminal concerns cited in the SSC.

I therefore find that the security concerns raised under Guideline J by the Individual's criminal activity have been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has resolved each of the security concerns raised under Guidelines G and J. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals