



The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-24-0115 at 10 (hereinafter cited as “Tr.”). The LSO presented the testimony of the DOE Psychiatrist. *Id.* at 57. The Individual submitted thirteen exhibits, marked Exhibits A through M. The LSO submitted thirteen exhibits, marked Exhibits 1 through 13.<sup>2</sup>

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

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the bases for concern regarding the Individual’s eligibility to possess a security clearance. Exhibit (Ex.) 1 at 5.

Guideline G provides that “[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. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as . . . fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, . . .” and “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder . . .” *Id.* at ¶ 22(a), (d). The SSC cited the following information. The DOE Psychiatrist reported in December 2023 that the Individual met sufficient criteria under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, for a diagnosis of Alcohol Use Disorder (AUD), Moderate, in early remission, without adequate evidence of rehabilitation or reformation. Ex. 1 at 5. In August 2023, the Individual was charged with Felony Abuse of a Child and Criminal Damage to Property of Household Member, after an incident involving an argument with his then-girlfriend and after the Individual had consumed a six-pack of beer. *Id.* Lastly, in September 2022, the Individual was charged with Aggravated Battery of a Household Member after an argument with the same then-girlfriend. *Id.* The Individual admitted that he had consumed three beers and two shots of liquor prior to this incident. *Id.* The cited information justifies the LSO’s invocation of Guideline G.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[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[.]” *Id.* at ¶ 31(b). The SSC recited the September 2022 and August 2023 arrests and charges cited under Guideline G. Ex. 1 at 5. The cited information justifies the LSO’s invocation of Guideline J.

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<sup>2</sup> References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

### 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. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. FINDINGS OF FACT

In September of 2022, the Individual was arrested and charged with Aggravated Battery of a Household Member. Ex. 8 at 38. The Individual admitted that prior to this incident, he had consumed three beers and two shots of liquor. Ex. 10 at 61. The Individual stated that on this occasion he and his then-girlfriend were having an argument, and, as a result of that argument, he decided to leave their home. Tr. at 10. The Individual testified that his then-girlfriend called the police and falsely told them that he had attempted to strangle her. *Id.* at 11. According to the police report, the then-girlfriend told the police that she had arrived at her home to find the Individual consuming alcohol. Ex. 8 at 38. She and the Individual began arguing, and she went to bed. *Id.* She alleged that shortly after she went to bed, the Individual attempted to make up with her and "cuddle." *Id.* When she denied his attempts, she stated that he attempted to choke her. *Id.* The then-girlfriend said she got away from the Individual and went to another room. *Id.* The Individually allegedly followed her, but when she denied him a second time, he went to go watch television. *Id.* When she later went to check on him, they began to argue again, and the Individual attempted to choke her again. *Id.* At some point the Individual seemed to "snap to his senses" and left in his truck. *Id.* The then-girlfriend also told the police that there had been two prior instances of domestic violence between her and the Individual, but she had not previously reported them. *Id.* This criminal case was dismissed in January of 2023. Ex. F.

In August of 2023, the Individual was arrested and charged with Felony Abuse of a Child and Criminal Damage to Property of Household Member. Ex. 7 at 26. Prior to this incident, the Individual had consumed six beers. *Id.*; Tr. at 13. During the hearing, the Individual stated that he and his girlfriend had moved back in together at the beginning of the month, but he realized that the relationship would not work and was attempting to move out. Tr. at 13. He said that the girlfriend begged him not to leave and threatened to call the police. *Id.* The police came to the residence and spoke with the Individual and his girlfriend separately, and, after speaking to them, the police arrested the Individual. *Id.* The Individual testified that the police said that he broke a toddler bed, which the Individual denied. *Id.* at 13–14. The Individual also denied during the hearing that the incident had anything to do with his alcohol consumption. Tr. at 25, 49. However, according to the police report, the Individual told the police officer that he and his then-girlfriend “got into a verbal altercation because he was consuming alcohol.” Ex. 7 at 26. The Individual also allegedly told the police officer he had taken his then-girlfriend’s keys and hidden them from her. *Id.* Also according to the police report, when the police officer spoke to the then-girlfriend, she said that she had asked the Individual to leave because he was intoxicated. *Id.* She went on to say that while inside the house, the Individual had tossed and damaged a bed belonging to her four-year old child while the child was nearby. *Id.* The officer reported seeing the damaged bed in the home. *Id.* The charges related to this incident were dismissed in October of 2023. Ex. C.

The record includes a Fitness for Duty (FFD) evaluation dated August 2023.<sup>3</sup> Ex. 11 at 98. During the evaluation, the Individual reported that he believed his girlfriend broke the toddler bed to bolster a case of domestic violence against him out of her desire to prevent him from leaving their home that day and ending their relationship. *Id.* at 99. He provided the same motivation in asserting that his then-girlfriend made up the allegations that he strangled her during the 2022 incident. *Id.*

As a consequence of his arrests, the Individual underwent a psychiatric evaluation in December 2023 conducted by the DOE Psychiatrist. Ex. 11 at 79. After meeting with the Individual and reviewing his personnel security file, the DOE Psychiatrist concluded that the Individual met sufficient criteria for a diagnosis of AUD, Moderate, in early remission.<sup>4</sup> *Id.* at 72–73. The DOE Psychiatrist opined that, in order to demonstrate rehabilitation or reformation, the Individual should demonstrate abstinence from alcohol for a minimum period of twelve months and during that time he should also attend meetings of Alcoholics Anonymous, SMART Recovery, or a similar program at least three times per week with evidence of following program guidelines and submit to toxicology testing like phosphatidyl ethanol (PEth) tests every other month to monitor abstinence.<sup>5</sup> *Id.* at 79. The DOE Psychiatrist noted that if the Individual had a PEth test come back positive for alcohol use, he should enter an intensive outpatient program approved by his employer. *Id.*

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<sup>3</sup> The Individual went through his employer’s FFD program twice as a result of his criminal charges. Explained in more detail below, he first entered after the 2022 incident and then again after the 2023 incident. *See* Tr. at 19.

<sup>4</sup> In reaching the conclusion, the DOE Psychiatrist noted that the Individual had been diagnosed with AUD during his FFD evaluation. Ex. 11 at 78.

<sup>5</sup> PEth, as explained in the DOE Psychiatrist’s report, “is a marker of alcohol exposure to the body. PEth does not occur naturally in the body so elevated PEth levels are evidence of alcohol exposure.” Ex. 11 at 75. PEth testing can detect “the average use of alcohol over the previous 28–30 days.” *Id.*

During the evaluation, the Individual stated that he may have knocked over the child's bed during the 2023 incident. *Id.* at 73. However, the DOE Psychiatrist also reported the Individual's stated belief that his then-girlfriend broke the bed to have him removed from the house. *Id.* at 75.

As part of his psychiatric evaluation, the Individual underwent a PEth test, which came back negative for alcohol use. *Id.* at 75–76. The Individual testified at the hearing that he underwent urine testing at work once a week, and he believed that the tests were looking for alcohol use. Tr. at 30. The tests cover an approximately seven-month period in 2022 and approximately August of 2023 to February of 2024; he testified that all of the test results were negative for alcohol use. *Id.* at 31. The Individual submitted twenty-nine pages of urine tests, which were largely illegible. Ex. H. He also provided seventy-seven pages of breath alcohol tests taken between 2022 and 2024. Ex. J. The results were all negative. *Id.*

The Individual provided certificates showing that he had completed a six-week alcohol education and awareness course in November 2022 as well as a twelve-hour substance abuse and misuse course in February 2024. Ex. A; Ex. D. He also submitted a certificate showing that he had completed an anger management course in January 2024. Ex. B. In addition to his certificates, the Individual also provided two letters from the therapist with whom he underwent anger management. One letter is from December of 2023 explaining that the Individual had completed ten anger management sessions required as part of his second FFD and made good progress on learning to deal with anger. Ex. G; Tr. at 42. The second letter, dated July 2024, states that for approximately one year the Individual and therapist continued to work on identifying healthy relationship qualities and also relapse prevention skills and healthy ways to cope with stress. Ex. G; Ex. E.

At the hearing, the Individual testified that after his arrest in September of 2022, he completed his employer's FFD program.<sup>6</sup> Tr. at 18. While he was in FFD from September of 2022 until April of 2023, he did not consume any alcohol. *Id.* at 35–36. After completing FFD, he began to drink again casually in social settings. *Id.* at 36. The Individual testified that he has not consumed any alcohol since the night of his arrest in August of 2023 and that he does not intend to resume consuming alcohol. *Id.* at 16, 36–37. He said that he does not find it hard not to drink alcohol even if others are consuming alcohol around him and that his family strongly supports his decision not to consume alcohol. *Id.* at 37–38, 40. He explained that he stopped drinking because he knew he had to report the arrest to DOE, and he knew that not consuming alcohol would make it more likely that he would retain his access authorization. *Id.* at 17–18. The Individual also stated that after completing the ten anger management sessions, he decided to continue to see the therapist on approximately a weekly basis. *Id.* at 21–22. He said that he and the therapist talked about anger management, relationships, and alcohol use and that he feels that the therapy has been quite beneficial to him. *Id.* at 23. He clarified that his counseling was “more of a general” mental-health counseling instead of treatment for AUD. *Id.* at 24.

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<sup>6</sup> He testified that his clearance was suspended during this period, but it was reinstated after he completed the FFD. Tr. at 18.

When asked why he did not undergo any PEth tests as recommended<sup>7</sup> by the DOE Psychiatrist, the Individual said that he “just didn’t know [he] had to do it.” *Id.* at 34. He also reiterated that he did not feel that he has a problem with alcohol use, though he felt that he “got a lot out” of the alcohol education courses he was required to take as part of FFD. *Id.* at 35. The Individual also testified that he still interacts with his then-girlfriend socially, about once a month. *Id.* at 16.

After observing the Individual’s testimony, the DOE Psychiatrist testified that based on the “honor system” and the Individual’s testimony, he would consider the Individual to be in sustained remission from his AUD. *Id.* at 59. However, the DOE Psychiatrist also testified that he does not feel that there is sufficient objective evidence<sup>8</sup> to corroborate the Individual’s testimony that he has not consumed alcohol because the Individual did not undergo regular PEth tests as recommended in the report. *Id.* at 60. The DOE Psychiatrist stated that while he felt the Individual was gaining value from his therapy sessions, he did not feel that those sessions provided the same kind of treatment that the Individual would have obtained from alcohol-related group meetings. *Id.* at 61. He further explained that the alcohol-related group meetings were important because these groups are specifically about alcohol use, building coping skills, and supporting people who have the same struggles. *Id.* at 70. The DOE Psychiatrist also stated that he remained concerned that the Individual did not have objective proof of his sobriety and that the Individual stated that he did not believe he had a problem with alcohol use. *Id.* at 62. The DOE Psychiatrist testified that he believed the Individual was “on the road” to rehabilitation, but he did not believe the Individual was rehabilitated at the time of the hearing. *Id.* at 62–63.

## V. ANALYSIS

### A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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

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<sup>7</sup> The DOE Psychiatrist testified that the action items he provided in his report were “requirements” and not “recommendations” because he believed them to be necessary for the Individual to demonstrate rehabilitation or reformation. Tr. at 67. This Decision refers to these action items as recommendations for two reasons. First, that term better represents their role within the administrative review process. An individual is not required to follow any suggestions or recommendations of a treatment professional, although their failure to do so may impact their ability to carry their burden to mitigate the concerns derived from a diagnosed condition. Second, in this case, the language the DOE Psychiatrist repeatedly used in the report is that the Individual “should” take the actions outlined therein. Ex. 11 at 79.

<sup>8</sup> The DOE Psychiatrist explained that unlike a PEth tests, the breath tests and urine tests that the Individual underwent only test for alcohol consumption that occurred within several hours before the test. Tr. at 60, 68.

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.

I conclude that none of the above mitigating conditions apply to resolve the Guideline G security concerns. I find that ¶ 23(a) does not apply because that mitigating condition is based on the passage of time, infrequency, or unusual circumstances such that the concerning conduct is unlikely to reoccur. Here, the Individual has had two alcohol-related arrests occur within the last two years and a diagnosis of AUD from which he has not yet demonstrated rehabilitation. In reaching my conclusion regarding his AUD, I rely upon the DOE Psychiatrist's conclusion which is based on the fact the Individual did not engage in the recommended treatment that would have provided additional benefits for recovery; the lack of recommended PEth testing, which would have covered a broader window than the testing undergone by the Individual; and the fact that the Individual continues to assert he does not have problem with alcohol despite the diagnosis of AUD and history of alcohol-related criminal charges. Because the Individual's AUD is unresolved, I therefore do not conclude that the concerns are mitigated by the passage of time, frequency of the behavior, or unusual circumstances. Based on my above reasoning, I cannot say that that his behavior is unlikely to recur or does not cast doubt on the Individual's reliability, trustworthiness, or judgment.

Second, I find that ¶ 23(b) does not apply to resolve the security concerns because the Individual has not acknowledged his pattern of maladaptive alcohol use. He continues to deny that he has an alcohol problem. Furthermore, he did not show that his subsequent actions were in accordance with treatment recommendations. He did not participate in AA or SMART Recovery as the DOE Psychiatrist recommended, the treatment the Individual testified about is not focused on his AUD, and there is a lack of evidence demonstrating abstinence given the limitations in the alcohol testing the Individual underwent.

Lastly, I find that ¶ 23(c) and ¶ 23(d) do not apply because the Individual is not currently participating in a counseling or treatment program to address his AUD, and he has not successfully completed a treatment program or required aftercare or demonstrated a clear and established pattern of abstinence in accordance with the DOE Psychiatrist's treatment recommendations. As I concluded above, the treatment he is currently receiving is not focused on addressing his AUD.

Accordingly, I conclude that the Individual has not put forth sufficient evidence to resolve the Guideline G security concerns.

## **B. Guideline J Considerations**

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (a) 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;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

I find that none of the above mitigating conditions apply to resolve the Guideline J concerns. I find that ¶ 32(a) does not apply to resolve the security concerns for the following reasons. First, the Individual has had two arrests within the last two years; the incidents happened relatively recently. Based on my reasoning in the preceding section, the circumstances surrounding his arrests were not unusual. I am also concerned by the Individual's dubious testimony regarding the incidents. The record contains several contradictory descriptions of the events, including those provided by the Individual. At the hearing, the Individual denied breaking the toddler bed during the 2023 incident. But, during the FFD evaluation, he acknowledged that he may have broken the bed while also accusing his then-girlfriend of breaking the bed to have him removed from their home and to build a domestic violence case against him. However, his latter statement is inconsistent with his testimony that his then-girlfriend threatened to call the police to prevent him from leaving. In other words, the Individual's explanations provide contradictory motivations for his then-girlfriend's alleged behavior. Furthermore, the record includes his then-girlfriend's statement to the police in 2023 that she wanted the Individual to leave the home because he was consuming alcohol, which is the same thing the Individual is reported as telling the police officer when the officer first arrived: that they were arguing because the Individual had consumed alcohol. However, at the hearing, the Individual denied that they had been arguing due to his alcohol consumption. Based on the conflicting evidence, I question the credibility of the Individual's testimony. I also find concerning his testimony that he still interacts socially with his then-girlfriend despite his assertions that she twice had him arrested and threatened his career by making false criminal allegations against him. If true, that demonstrates a concerning lack of judgment. Based on my above reasoning, I conclude that the concerns are not mitigated by the passage of time or circumstances surrounding his behavior.



Regarding ¶ 32(b), I conclude the Individual was not pressured or coerced into committing the acts. There is no evidence that he was pressured or coerced into committing any of the acts outlined in the SSC.

As to ¶ 32(c), while the Individual testified that he did not commit the acts described in the police report, his testimony alone, based on my findings under ¶ 32(a) above, is not sufficient to outweigh the information contained in the police report. Without some credible corroborating evidence to undermine the information in that report, I cannot conclude that the evidence in the record regarding the Individual's criminal conduct is unreliable.

Finally, regarding ¶ 32(d), I conclude that the evidence of rehabilitation, including the Individual's counseling sessions, does not overcome my concern. First, based on my reasoning under ¶ 32(a) above, I do not conclude that he has acknowledged his conduct or provided reliable information regarding the surrounding circumstances. Second, I cannot conclude that he has demonstrated rehabilitation given that his AUD is not resolved and his use of alcohol was a factor contributing to his conduct that led to both arrests.

Accordingly, I conclude that the Individual has not resolved the Guideline J security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G and Guideline J of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals