

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	August 8, 2024)	Case No.: PSH-24-0174
)	
)	

Issued: February 14, 2025

Administrative Judge Decision

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material or Eligibility to Hold a Sensitive Position."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. On September 21, 2023, the Individual tested positive for alcohol on a random breath alcohol test (BAT) administered to him by his employer. *See* Exhibit (Ex.) 5² at 20 (summarizing the results of the positive BAT). On October 25, 2023, the Individual told his Human Reliability Program (HRP) psychologist that he had consumed one beer since his positive BAT, and the HRP psychologist recommended that the Individual abstain from alcohol although he stated that this

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

² The exhibits submitted by the DOE, except Exhibit 10, were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to Exhibit 1 through Exhibit 9 submitted by DOE. Exhibit 10 is a post-hearing exhibit, and the internal pagination of Exhibit 10 does not correspond the number of pages included in the exhibit. With regard to Exhibit 10, this Decision cites to the pages in the order in which they appear in Exhibit 10.

was not a requirement. Ex. 6 at 35³ (citing October 25, 2023, Incident Report). Subsequently, the Local Security Office (LSO) provided the Individual with a Letter of Interrogatory (LOI), which he completed in November 2023. Ex. 6. In his November 2023 LOI response, the Individual stated that on the evening prior to his positive BAT, he had consumed three glasses of wine with dinner. *Id.* at 24. He stated in his LOI response that his future intentions towards alcohol include that he will not consume alcohol the day prior to going to work. *Id.* at 26. He further stated that he consumes one to two drinks of alcohol with a frequency of two to three times per month, and he last consumed alcohol on October 21, 2023. *Id.*

On January 22, 2024, the Individual's HRP psychologist requested that the Individual undergo a phosphatidylethanol (PEth) test, which was positive at 233 ng/mL.⁴ Ex. 5 at 20–21 (Personnel Security Incident Report dated February 15, 2024). The HRP psychologist noted that while the Individual had admitted to him, on the date of his January 2024, PEth test, that he had consumed alcohol between Thanksgiving and New Year's Day, he did not report a heavy use of alcohol. *Id.* at 20. During a subsequent February 15, 2024, meeting with the HRP psychologist, although the Individual asserted that he had not consumed alcohol since New Year's Day, he admitted that he may have consumed as many as four alcoholic drinks per day during the period between Thanksgiving and New Year's Day. *Id.* The HRP psychologist subsequently referred the Individual for an intake appointment at a substance abuse treatment program. *Id.* at 20.

In April 2024, the Individual was evaluated by a DOE-contracted psychologist (DOE Psychologist), who opined that the Individual met sufficient diagnostic criteria for a diagnosis of Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)* and had not shown adequate evidence of rehabilitation or reformation. Ex. 7 at 40.

The LSO informed the Individual, in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual's 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) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the DOE Counsel submitted ten numbered exhibits (Ex. 1–10) into the record and presented the testimony of the DOE Psychologist. The Individual submitted twenty lettered exhibits (Ex. A–T) into the record and presented the testimony of five witnesses, including himself. *See* Transcript of Hearing, OHA Case No. PSH-24-0174 (hereinafter cited as “Tr.”).

³ This information is gathered from the report authored by the DOE-contracted psychologist who evaluated the Individual in April 2024. The October 25, 2023, Incident Report was not entered as an exhibit. Ex. 6 at 35.

⁴ “PEth is not a normal body metabolite. PEth accumulates when ethanol binds to the red blood cell membrane. The PEth level reflects the average amount of alcohol consumed over the previous 28-30 days” Ex. 7 at 45.

II. Notification Letter and Associated Security Concerns

The LSO cited Guideline G (Alcohol Consumption) as the basis for its concerns regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "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. The SSC cited the DOE Psychologist's determination that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Moderate, under the *DSM-5* and had not shown adequate evidence of rehabilitation or reformation. *Id.*; see Adjudicative Guidelines at ¶ 22(d) (stating that among the conditions that could raise a security concern is "diagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder").

III. Regulatory Standards

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

IV. Findings of Fact

The Individual underwent an evaluation with the DOE Psychologist which included an April 23, 2024, clinical interview (CI). Ex. 7. Following the evaluation, the DOE Psychologist issued a report (Report). *Id.* In forming her opinions, she relied on the information she obtained in the CI, her review of the Individual's Personnel Security File, and the *DSM-5*. *Id.* at 34. The Individual told the DOE Psychologist that after his September 2023, positive BAT, his employer recommended that he undergo a substance abuse evaluation by a substance abuse professional (the SAP). *Id.* at 35. The results of the SAP evaluation were based on the Individual's self-report, and did not indicate that the Individual met criteria for AUD. *Id.* The report from the SAP, dated October 11, 2023, stated that the SAP diagnosed the Individual with "Alcohol Intoxication, Without Use Disorder" and recommended that the Individual complete fourteen hours of online

education on alcohol misuse and addiction. Ex. 10 at 2–3. During the CI, the Individual told the DOE Psychologist that he was returned to work after he met the requirements set forth by the SAP, but he remained temporarily removed from HRP and was required to undergo follow-up alcohol and drug testing. Ex. 7 at 35.

As part of the evaluation, the DOE Psychologist reviewed the Individual's Personnel Security File, where she learned that the Individual had met with the HRP psychologist on October 25, 2023, and admitted at that time that he had consumed one beer since his positive BAT result. *Id.* When he asked the HRP psychologist if he should abstain from alcohol until the security concerns regarding his positive BAT were resolved, the HRP psychologist "highly recommended that he abstain and clarified this was not a requirement." *Id.* Despite being advised to abstain from alcohol use, the Individual consumed alcohol between Thanksgiving and New Year's Day. Ex. 7 at 36 (citing Ex. 5 at 20). Following the Individual's positive January 22, 2024, PEth test, which reflected a result of 233 ng/mL, the HRP psychologist consulted with an HRP physician regarding the Individual's positive PEth test and his report of alcohol consumption.⁵ Ex. 5 at 20; Ex. 7 at 36. The HRP physician reviewed the Individual's most recent bloodwork and found other indicators of excessive alcohol use including liver panel results. Ex. 5 at 20; *see* Ex. 7 at 36 (summarizing the HRP physician's findings from elevated liver panels and other lab work results). Subsequently, the HRP psychologist referred the Individual for an intake appointment at an intensive outpatient program (IOP) facility to determine his eligibility for substance abuse treatment. Ex. 5 at 20; Ex. 7 at 36.

During the CI, the Individual told the DOE Psychologist that between Christmas and New Year's Day he estimated drinking "three to four drinks per day for five days." Ex. 7 at 36. When the DOE Psychologist asked the Individual why he had not followed the HRP psychologist's advice to abstain from alcohol use, he stated that it was "not 'part of the policy.'" *Id.* at 38. The Individual also told the DOE Psychologist that during his intake at the IOP facility, he denied any concerns or problems regarding his alcohol use and was not recommended for any type of substance abuse treatment. *Id.* at 36. The DOE Psychologist spoke to the HRP psychologist three days after the CI, and the HRP psychologist told the DOE Psychologist that he typically provides collateral information to the IOP facility prior to an employee's intake, but was unable to do so prior to the Individual's intake appointment. *Id.* The Report stated, "[t]herefore, the recommendations [for treatment] (or lack thereof) were based solely on the subject's self-report." *Id.*

The Individual told the DOE Psychologist that he had not been drinking alcohol "on school nights" and had only consumed alcohol on two occasions since March 2024. *Id.* He reported that the first occasion was "around Easter" during a four- or five-day period between March 29 and April 1, 2024, when he estimated drinking three to four alcoholic drinks daily. *Id.* The second occasion was when he drank approximately four drinks per day for two days during the weekend of April 19 through April 20, 2024. *Id.* As part of the evaluation, the Individual underwent a PEth test, the result of which was positive at 461 ng/mL. *Id.* at 36, 47. The medical doctor who interpreted the Individual's PEth result opined that, "[a] PEth [at] 461 ng/mL indicates that [the Individual] has been regularly binge drinking around 5 drinks/day on average during the previous 30 days." *Id.* at 46. The medical doctor stated that the Individual's reported consumption amount, which he

⁵ A positive PEth test is a result of 20 ng/mL or greater. *See* Ex. 6 at 37.

disclosed during the CI, would likely [have] caused either a negative PEth (less than 20 ng/mL) or after a heavy binge, his PEth would have been in the lower range “such as PEth between 20-80 ng/mL.” *Id.* at 46.

In her Report, the DOE Psychologist opined that the inconsistency between the Individual’s report of his alcohol consumption and the lab testing results “suggests that he is minimizing the amount he is drinking which indicates a lack of integrity . . . [and] suggest[s] the Individual is drinking more alcohol than he intends or cares to admit despite . . . currently being under scrutiny regarding his alcohol use.” *Id.* at 37. Notably, the DOE Psychologist stated, “[i]n fact, his alcohol consumption has increased since his first PEth test in January.” *Id.* Ultimately, the DOE Psychologist concluded that the Individual met sufficient *DSM-5* diagnostic criteria for AUD, Moderate. *Id.* at 40. The DOE Psychologist recommended that the Individual should abstain from alcohol for twelve months, participate in Alcoholics Anonymous (AA) at least once weekly or attend an alternative to AA such as SMART, Motivation-Enhanced Therapy, or 12-step Facilitation Therapy, and she noted that strictly online programs are unacceptable. *Id.* She further recommended that the Individual participate in alcohol testing to include at least two PEth tests over a twelve-month period, and stated that “[p]roof of his abstinence would require documentation over twelve months from weekly participation in AA or other self-help group.” *Id.* at 40.

At the hearing, the Individual’s fiancée testified that she has been in a relationship with the Individual since March 2019, they got engaged two to three years ago and have been living together since 2020. Tr. at 14–15. She asserted that she has never had any concerns regarding the Individual’s alcohol consumption. *Id.* at 23–24. She stated she keeps alcohol in their house, and she occasionally consumes alcohol approximately five times per year. *Id.* at 25. The fiancée stated that she sees the Individual on a daily basis, and she last saw him consume alcohol in July 2024, which she stated is his sobriety date. *Id.* at 14–15.

The Individual’s fiancée testified that she has attended AA meetings with him in support of his sobriety, including AA groups that invite family members to attend. *Id.* at 15–16; *see* Ex. B (Fiancée’s letter of support dated October 3, 2024). She stated that the Individual attended an IOP, and she was aware that he has developed friendships with other IOP participants. Tr. at 18. The fiancée provided examples of how the Individual has shown his commitment to maintaining his sobriety including on one occasion when she observed the Individual attend an online AA meeting while they were on vacation in Fall 2024. *Id.* at 20–21, 29–30. Moreover, she testified that there have been occasions after July 2024, where she and the Individual have invited friends to their house for dinner, and although alcohol was present during those dinners, she asserted the Individual did not consume any alcohol. *Id.* at 30–31. The fiancée testified that she and the Individual have discussed the Individual’s future intentions with alcohol, and her understanding is that he will take things “one day at a time” which is also what he has been told to do at his IOP and other meetings. *Id.* at 17. When asked if this means he might decide to consume alcohol again, she replied that she “really couldn’t answer that . . .” *Id.* at 26–27. She testified that she finds the Individual to be trustworthy and reliable. *Id.* at 19.

The Individual’s close friend testified that he and the Individual have been friends since kindergarten, and they also work at the same worksite. *Id.* at 36–37; *see* Ex. D (Letter of support

dated September 25, 2024). He testified that he sees the Individual several times a year socially outside of work. *Id.* at 36, 43. The friend testified that the Individual told him about his positive BAT result that led to the security concerns. *Id.* at 51–52.

The friend testified that he last saw the Individual consume alcohol in spring 2024. *Id.* at 36–37. He stated that the Individual told him that he has participated in an IOP and AA and stated that he found AA to be helpful. *Id.* at 43. He stated he last saw the Individual two to three weeks ago outside of work and saw no indications that he had consumed alcohol, so he allowed the Individual to drive his wife’s car home while she was hospitalized. *Id.* at 38–39. The friend testified that he and the Individual have never discussed the Individual’s future intentions with alcohol. *Id.* at 48. He stated he has no concerns with the Individual’s reliability or judgment. *Id.* at 40, 47–48. He also testified that he trusts the Individual and has entrusted the Individual to provide caregiving for his children. *Id.* at 40.

The Individual’s accountability partner⁶ (the witness), who stated he is also in recovery, testified that he has known the Individual since the witness’s college graduation, and his letter of support states they have been friends for approximately twenty years. *Id.* at 57–58; Ex. E. He stated the Individual informed him of his positive BAT. Tr. at 66. The witness also testified that on one occasion in 2024, he and the Individual discussed the Individual’s recovery. *Id.* at 58–59, 70–71. He said that during that conversation the Individual did not tell him he had a problem with alcohol, but he thinks the Individual told him about his treatment at the IOP although he was not sure because he could not remember. *Id.* at 70–71. The witness stated that the Individual told him that he attends AA weekly, and his meetings are usually on Sundays. *Id.* at 68, 79–80. He also stated that he once saw the Individual attend a virtual AA meeting when he was at his house. *Id.* at 65.

The witness stated he and the Individual have never spoken about the Individual’s past use of alcohol. *Id.* at 62. The witness stated that he last saw the Individual a couple of weeks prior to the hearing date when he visited him at his house. *Id.* at 81. The witness stated that the Individual has never spoken to him about his future intentions regarding alcohol consumption. *Id.* at 74. The witness stated the Individual talked to him about “one day at a time,” and the witness asserted that the Individual is focusing on today because that is what recovery teaches them. *Id.* at 65, 73.

In addition to the three aforementioned letters of support from his fiancée, friend, and accountability partner, the Individual also submitted character reference letters from his brother and his current supervisor. Ex. C; Ex. Q. His brother and his current supervisor both expressed their support for the Individual. *Id.*

The Individual’s personal evaluating psychologist testified that he met with the Individual on three occasions, conducted a clinical interview, administered psychological testing, and read the Report. Tr. at 110; *see* Ex. P (“Confidential Psychological Assessment” signed by the Individual’s evaluating psychologist). He testified that he diagnosed the Individual with AUD, Moderate. Tr. at 111; Ex. P at 3. The evaluating psychologist also testified that the results from the Individual’s psychological tests indicate that the Individual is very “rule bound.” Tr. at 112. He asserted that

⁶ The witness testified that as an accountability partner for the Individual, it means that he is an “encourager” for the Individual’s sobriety. Tr. at 77.

this is one of the reasons that the Individual struggled to accept that he needed an alcohol treatment program. *Id.* at 113, 115. “He didn’t get a rule book telling him” that he needed treatment, and he heard different professionals telling him “different things” until he received the Report. *Id.* at 113, 115. He opined that the Individual has a good prognosis because he has followed through with treatment and PEth tests, and he has other supports for abstinence including family support. *Id.* at 116. He further testified that the Individual has indicated a commitment to recovery and has followed through with IOP treatment which “suggests reformation and recovery and rehabilitation.” *Id.* at 118.

The evaluating psychologist asserted that there is no research that suggests that a person with one year of sobriety will remain sober while a person with six months of sobriety will not remain sober. *Id.* at 129; *see* Ex. P at 3 (stating “in the Individual’s case, four to five months sobriety may be no more or less predictive”). However, he admitted that, “obviously, someone’s being sober for a year or two years, they’re more likely to stay sober, yes, than someone that’s been, at this point, six months sober.” Tr. at 129–30. The evaluating psychologist stated he believes the Individual thinks that he needs to be in recovery “to do what people want him to do at this point, in order to get his clearance back.” *Id.* at 120. He stated that he thinks the Individual is still struggling with and is in the process of understanding and being fully committed to a recovery program. *Id.* at 127. The evaluating psychologist stated that the Individual has accepted that he is not going to consume alcohol, which means that he will follow the rules as long as he needs to do so and will not drink alcohol because he was told not to do so. *Id.* The evaluating psychologist opined at first that the Individual is beyond the early stage, but still early in recovery; however, he then stated he is in the early stage as “it’s only been six months anyway. . . .” *Id.* at 135. He recommended that the Individual continue attending AA and consider attending psychotherapy for additional support. *Id.* at 131–33.

The Individual testified about the circumstances related to his January 2024, positive PEth test. *Id.* at 160, 166, 168. He stated that that one week prior to his January PEth test, he traveled out of state to help his friend with funeral preparations for the friend’s parents, who were his lifelong friends. *Id.* at 160, 168. He stated that it was “possible” that he drank too much alcohol during the five days that he was making funeral preparations. *Id.* at 166.

The Individual stated that he last consumed alcohol on July 7, 2024. *Id.* at 84–85. He testified that subsequent to his sobriety date, he has faced difficult situations including the deaths of some of his relatives and the death of his pet, but he has still remained sober. *Id.* at 167. The Individual testified to and submitted the results of three negative BATs and accompanying negative drug tests administered by his employer from July 9, 2024, through December 2, 2024. Tr. at 86–87; Ex. N at 10–11, 15, 18–19; Ex. O. In addition, he submitted a negative urinalysis test dated July 19, 2024, and a negative drug and alcohol test from his IOP dated July 23, 2024. Tr. at 92; Ex. I; Ex. J. The Individual testified that he also took PEth tests on August 20, 2024, and November 1, 2024, through his treating physician and he submitted two letters from his treating physician verifying that both of his PEth tests were negative. Tr. at 93, 95; Ex. K; Ex. M. The Individual also submitted three additional negative PEth tests dated October 1, 2024, December 5, 2024, and December 18, 2024. Ex. L; Ex. S; Ex. T. The Individual testified that he provided the treating physician a copy of the Report and stated that the treating physician has not advised him to stop consuming alcohol due to any of his conditions. Tr. at 95.

The Individual was admitted into an IOP on July 23, 2024, and completed the program on September 13, 2024. Ex. G at 1. The Individual testified that he liked that the IOP providers used a customized approach in providing treatment by recognizing that his own personal experience differs from others and tailoring their approach to help him. *Id.* at 152–53. He stated he preferred the IOP over AA because he developed a close relationship with one of the IOP therapists and he also liked the group of participants he was with during the program. *Id.* at 97. He stated that during his IOP, a counselor taught him about the importance of self-care. *Id.* at 153. As a result, the Individual testified that he practices self-care by doing meditation, going out driving on the open road, and doing house projects as a form of physical activity. *Id.* at 154–55. The Individual stated that he has attended “a few” of the IOP aftercare courses. *Id.* at 145. He stated he likes attending those meetings to ask how some of the other participants are doing because he wants them to succeed. *Id.* at 165. He stated he communicates weekly with two participants from his IOP with whom he has close relationships. *Id.* at 144.

The Individual testified that he has been attending AA on a weekly basis since he completed IOP. *Id.* at 143; see Ex. H (weekly AA attendance sheets from July 22, 2024, through November 1, 2024). He attends in-person AA meetings at his regular AA group that meets weekly, and if he is out of town on vacation, he has attended online AA meetings. *Id.* at 143. When asked if he identifies as an alcoholic in AA meetings, he replied, “I haven’t spoken at one.” *Id.* at 146. He stated that he talks to people during their smoke breaks, and he listens to people give their testimonies during meetings which helps him understand others and their difficulties. *Id.* at 146. When asked if he was working through the steps of AA, he said “I do it [the Individual’s] way[.]” which means he “look[s] at the 12 steps . . .” and he reads the big book. *Id.* at 143–44. He stated his “version” of progressing through the 12 steps is that he “touch[es] on all of them,” but he does not “do the checkmark” of going through the steps in sequential order. *Id.* at 155. He indicated that one AA step that he is working through is the step that involves making amends. *Id.* at 156. Additionally, he indicated that he might consider getting an AA sponsor, but stated that rather than getting a sponsor, he would rather talk to his family or his accountability partner even if it is just a phone call. *Id.* at 144. He stated that he has disclosed the details of his sobriety journey and treatment to his family, fiancée, and close friends and he asserted they are his strongest support system. *Id.* at 162–63.

Regarding his future intentions about alcohol use, he replied, “It is day by day.” *Id.* at 99. He explained that he asks himself what he is going to do today and stated, “today’s goal is to continue my life, and . . . at this time, being abstinent is part of my life . . . I can’t predict the future, but . . . I can control some aspects of it, and right now I am controlling it.” *Id.* When the Individual was asked if he has any intention of consuming alcohol again in the future, he stated it was a difficult question for him to answer, and that he does not have a desire or trigger to drink alcohol, “but [he] can’t predict the future.” *Id.* at 109. He stated if he is told not to drink alcohol and to continue taking PEth tests, then “that’s what [he will] do.” *Id.* The Individual stated that he has been told in the Report that his problem is binge drinking. *Id.* at 142. He testified, “It’s obvious that I don’t have to have a drink every day, but one too many is . . . very feasible, possible. And my future intention is to take care of that problem.” *Id.* at 140–41. When asked to explain what he meant about his future intentions regarding “that problem,” the Individual stated, “[b]e more cognizant of how much I consume in those settings, whether it be four, five times a year, be more aware of

what the consequences are, acknowledge that this is being considered that I'm a binge drinker." *Id.* The Individual stated that while he has had prior problems due his alcohol use, this time is different because this time his security clearance is suspended. *Id.* at 147. He asserted that as a result, he will make changes including that he currently does not drink alcohol at all. *Id.* However, when asked what things he would do differently, he stated, "that's hard to answer because I really don't think about drinking as much as everybody else thinks I do." *Id.*

The DOE Psychologist updated the Individual's diagnosis, as of the hearing date, to AUD, Moderate, in early remission because he has three or more months, but less than twelve months, of abstinence. Tr. at 194. The DOE Psychologist testified that since the Individual has been abstinent from alcohol for less than six months, that is "less than half the time" than what she recommended in order to demonstrate adequate evidence of rehabilitation or reformation. *Id.* at 191. She stated that "he's currently in rehabilitation" because he is currently in AA, and he participated in IOP. *Id.* at 196. She also stated that the Individual showed positive indicators for his future progress, in that he has been able to abstain, has undergone more frequent PEth tests than she recommended, and is attending AA. *Id.* at 194.

However, the DOE Psychologist opined that the Individual has a fair prognosis. *Id.* at 195. She stated that she has concern for the Individual's prognosis for multiple reasons, including because he has not fully acknowledged having a problem with alcohol and "[h]is understanding of the problem that I'm stating he has is not complete." *Id.* at 192-93. She also testified that while the Individual has started the recovery process, she believes it is "very surface level" and is motivated by "having oversight" to restore his clearance including having PEth tests and the administrative review hearing. *Id.* at 193. She further stated that being the "rule bound person" as described by his evaluating psychologist, the DOE Psychologist is concerned that without having oversight, the Individual's default will be to rely on his own determination of what he thinks is "too much alcohol, or too frequently drinking" and that is what has caused problems in the past. *Id.* at 193. The DOE Psychologist further testified that she still does not understand the Individual's motivation for abstinence, other than he is being "forced" to abstain. *Id.* at 192. Moreover, regarding his AA level of engagement, she noted that the Individual has not fully acknowledged that he is an alcoholic and that he needs help. *Id.* at 201. She explained that he seemed to be attending AA more like "an observer" which was another example of his "surface level" process of recovery that also factored into her opinion of his fair prognosis. *Id.* at 201. The DOE Psychologist further testified that her rationale for the Individual's prognosis was also influenced by the fact that he could not state an intention for the future. *Id.* at 195. She stated that without an intention, "we do [not] know what direction to go" and she noted that whenever the Individual and his witnesses were asked about his future intentions there was either no answer or the answer was generally stating "I cannot predict the future." *Id.* Therefore, the DOE Psychologist testified:

I cannot with any confidence say that this individual has any intention or motivation to, after this hearing, . . . to maintain any of the actions that he's put in place currently to maintain abstinence, to maintain involvement in AA. I just don't have any confidence because that information wasn't shared today.

Id. at 195-96.

V. Analysis

Conditions that could mitigate security concerns under Guideline G 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 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.

Regarding the first mitigating factor under ¶ 23(a), the Individual has submitted evidence that he has abstained from alcohol since July 2024, which reflects approximately five months of abstinence through the date of the hearing. I also credit the Individual for his IOP completion, ongoing AA attendance, and negative PEth tests. However, I must take into consideration the fact that the Individual has shown poor judgment in the recent past after his positive BAT in September 2023 by continuing to consume alcohol, which led to a positive PEth test in January 2024 and an even higher level positive PEth result in April 2024. Further, I agree with the DOE Psychologist's opinion that although he is involved in recovery, the Individual's level of involvement is "surface level." Moreover, based on the Individual's testimony, it is not clear that he has any intention or motivation to continue abstaining from alcohol and maintaining his AA participation after the hearing date. In addition, I find that the Individual's behavior was not infrequent because the Individual continued to consume alcohol after his September 2023 positive BAT, and he did not follow his employer's suggestion to abstain. For the foregoing reasons, including the Individual's relatively brief period of abstinence, I find that the Individual's alcohol consumption was not infrequent nor did it occur under unusual circumstances, and an insufficient period of time has elapsed for me to conclude that the Individual's problematic alcohol consumption is unlikely to recur or does not cast doubt on his reliability, trustworthiness, and judgment. Therefore, I find the Individual has not mitigated the security concerns under ¶ 23(a).

While the Individual has acknowledged his maladaptive alcohol use to some extent and taken steps to overcome his problems with alcohol, he has not established a pattern of modified consumption or abstinence from alcohol in accordance with treatment recommendations. *Id.* at ¶ 23(b). In the Report, the DOE Psychiatrist recommended that the Individual achieve rehabilitation or

reformation by demonstrating twelve months abstinence, attending weekly AA meetings for that period, and undergoing PEth tests. Given the Individual's five months of sobriety, he has achieved less than half the recommended period of abstinence. Likewise, the Individual has submitted verification of four months of AA attendance, which is also insufficient to meet the DOE Psychologist's recommendations. I have considered the SAP report dated October 11, 2023, which reflects that the SAP diagnosed the Individual with a less severe alcohol related diagnosis than the DOE Psychologist's diagnosis of AUD, Moderate.⁷ I note, however, that the security concerns alleged in the SSC do not stem from the SAP report; rather, they only stem from the Report. To the extent that there are differences between the findings of the SAP and the DOE Psychologist, it is noteworthy that the DOE Psychologist found objective evidence that showed that the Individual had increased his alcohol consumption from January 2024 through the date of her April 2024, evaluation. This evidence is particularly significant in light of the inconsistencies between the Individual's self-reports of his alcohol consumption and objective testing that reflects heavy consumption. Accordingly, I find that the DOE Psychologist's diagnosis and recommendations are accurate and complete and therefore persuasive.

Additionally, although the Individual has provided some evidence of actions taken to overcome his problem, I have some concerns that his understanding of his AUD is not complete, and he has not completely acknowledged his pattern of maladaptive alcohol use. For example, although he is attending AA, he does not identify as an alcoholic in AA meetings and is not formally working the twelve steps of AA. When asked what he meant by taking care of "that problem," he stated he would "[b]e more cognizant of how much I consume in those settings . . . be more aware of what the consequences are, acknowledge that this is being considered that I'm a binge drinker." Tr. at 142. I find the Individual's response to be problematic because it provides no indication that he fully acknowledges he has an alcohol problem, nor does it provide any indication that he understands that abstinence is a necessary part of his successful recovery. As pointed out by the DOE Psychologist, he could not state an intention for the future and his motivation to abstain seems based on the fact that he is being "forced" to abstain. For the foregoing reasons, including the Individual's insufficient pattern of abstinence that is not in accordance with treatment recommendations, I find that the Individual has not mitigated the security concerns under ¶ 23(b).

With regard to the mitigating conditions at ¶ 23(c) and (d), while the Individual completed an IOP and is attending AA, he has not completed twelve-months of AA with proof of attendance as recommended by the DOE Psychologist. While I credit the Individual for providing more PEth tests than the two PEth tests recommended by the DOE Psychologist, the fact remains that the Individual has only been abstinent for approximately five months, and has therefore not

⁷ At the hearing, the Individual's attorney argued that the SAP report contains exculpatory information which should have been provided to the Individual in advance of the hearing. Tr. at 207. I notified the parties during the hearing that I would hold the record open to allow the DOE to submit the SAP report. *Id.* at 211. The SAP report was received into evidence as post-hearing Exhibit 10. In a post-hearing email, the Individual's attorney argued that the DOE's failure to provide the SAP report in advance of the hearing "damaged [the Individual's] ability to address and resolve the concerns and present evidence regarding any issues raised in this report." Email from Individual's attorney to OHA and DOE Counsel (January 9, 2025); *see* Ex. 10 (SAP report). I take due notice of the concerns presented in the attorney's email. I note, however, that although the Individual did not receive the SAP report until after the hearing, he had received the DOE Psychologist's Report (Exhibit 7) which prominently referenced and discussed the SAP's evaluation, prior to the hearing. Therefore, the Individual was on notice of the content of the SAP report, and the Individual or his attorney could have requested a copy of the SAP report prior to the hearing.

demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. Moreover, as stated by both the DOE Psychologist and the evaluating psychologist, the Individual is still in the early stages of recovery. Additionally, even though the evaluating psychologist gave the Individual a good prognosis, he acknowledged his belief that the Individual is still struggling with and is in the process of understanding and being fully committed to a recovery program. Also, the DOE Psychologist provided well-reasoned rationale that cited multiple reasons for giving the Individual a fair prognosis. For example, although the Individual is attending AA, his participation is more like “an observer” which is an example of his “surface level” process of recovery. Moreover, the Individual did not express a clear intention to abstain from alcohol in the future, and he has indicated that his motivation for not consuming alcohol is that he is being forced to abstain. Therefore, since the Individual has not yet completed twelve months of AA, has a fair prognosis, and has not yet demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, he has not met the mitigating conditions at ¶ 23(c) and (d).

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 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual’s access authorization should not be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals