

2024, in which she opined that the Individual did not meet sufficient diagnostic criteria for a diagnosis of alcohol use disorder or habitually or binge consume alcohol to the point of impaired judgment. Ex. 15 at 124–25.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 7–9. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline J of the Adjudicative Guidelines. *Id.* at 6.

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 conducted an administrative hearing. The LSO submitted seventeen exhibits (Ex. 1–17). The Individual submitted fourteen exhibits (Ex. A–N).³ The Individual testified on his own behalf and offered the testimony of his therapist (Therapist), his supervisor,⁴ and his girlfriend. Hearing Transcript, OHA Case No. PSH-25-0020 (Tr.), at 3, 10, 32, 42, 58. The LSO did not call any witnesses to testify.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 6. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual having been charged with Battery Against a Household Member and DUI. Ex. 1 at 6. The LSO’s citation to the Individual having been charged with criminal conduct justifies its invocation of Guideline J. 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 Dep’t 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

³ The Individual’s exhibits were submitted via three separate PDFs. This Decision cites to exhibits based on the order in which pages appear in each PDF.

⁴ The supervisor testified to the Individual’s positive employment record, reliability, and trustworthiness, both before and after the alleged criminal conduct, but did not possess knowledge of the specific circumstances of the Individual’s alleged criminal conduct or the criminal proceedings associated with each alleged offense. Tr. at 35–36, 38–39.

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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *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

In 2019, the Individual suffered a serious medical incident. Tr. at 61; Ex. 15 at 121; Ex. M at 2 (sworn affidavit from the Individual’s father). Subsequent deterioration of the Individual’s health left him unable to walk or speak and resulted in medical practitioners prognosticating that the Individual would die within two years, causing him substantial anxiety and fear. Tr. at 61–64; Ex. 15 at 121. The Individual eventually recovered from the medical incident after a lengthy period during which he received speech and physical therapy. Tr. at 64. In 2020, a relative of the Individual with whom the Individual had a close relationship and spoke nearly daily died by suicide. *Id.* at 65; Ex. 15 at 121; Ex. M at 2. In 2022, another relative to whom the Individual was very close died suddenly. Tr. at 65–66; Ex. 15 at 121; Ex. M at 2. At some point during this three-year period, the Individual began coping with his negative emotions through binge drinking. Tr. at 68; Ex. 15 at 124.

The Individual began meeting with the Therapist on a biweekly basis in August 2021 to address emotional issues related to his medical incident and the deaths of his relatives. Tr. at 11, 19, 66–67. The Therapist provided the Individual with cognitive behavioral therapy to “help him with his cognitions, thoughts, and behaviors . . . seeing how the behavioral rewards accompany that . . . [and] reinforce[] the behaviors” as well as therapy focused on the stages of bereavement. *Id.* at 27–28. During the course of therapy, the Individual came to believe that his relationship with the ex-girlfriend was unhealthy and in mid-January 2023 he broke up with the ex-girlfriend. *Id.* at 15, 69–70; *see also* Ex. M at 3 (affidavit from the Individual’s father confirming that the Individual and ex-girlfriend broke up prior to the altercation).

On January 30, 2023, a law enforcement officer interviewed the Individual and his ex-girlfriend concerning allegations by the ex-girlfriend that the Individual had engaged in domestic violence the previous day. Ex. 10 at 46. Information collected by the officer indicated that the Individual’s ex-girlfriend had taken the Individual’s cellphone during an argument at the Individual’s father’s house. *Id.* at 46–47. The Individual’s ex-girlfriend claimed that the Individual pushed her to the ground and slapped her cheek during the argument. *Id.* at 46. The Individual denied having pushed her to the ground or having slapped her and represented that she fell to the ground while he was trying to wrestle the cellphone from her hand. *Id.* at 47. Both the Individual and his ex-girlfriend consumed alcohol prior to the altercation, and in his response to the First LOI the Individual admitted that he was intoxicated during the dispute. *Id.*; Ex. 12 at 78; *see also* Tr. at 70–71, 80–81

(testimony of the Individual that the ex-girlfriend was intoxicated when she drove to his father's home uninvited and that he was intoxicated when she arrived). On April 18, 2023, the Individual was charged with Battery Against a Household Member based on the ex-girlfriend's allegations. Ex. 10 at 46.

On February 16, 2024, the Individual consumed approximately eight alcoholic drinks while out with friends. Ex. 11 at 49, 55. In the early morning hours of February 17, 2024, a law enforcement officer observed the Individual failing to maintain his lane while driving his vehicle. Ex. 7 at 30–31. The law enforcement officer pulled the Individual over and administered a field sobriety test, which the Individual failed. *Id.* at 30. The Individual was administered Breathalyzer tests which estimated the Individual's blood alcohol concentration at .12 and .11. *Id.* The Individual was subsequently arrested and charged with DUI. Ex. 8 at 34.

The DOE contractor employing the Individual placed him on a fitness for duty evaluation program beginning on February 21, 2024. Ex. A at 3. As part of the fitness for duty evaluation, the Individual provided urine samples for ethyl glucuronide (EtG) testing. *Id.* at 4. Each of the tests was negative for traces of alcohol. *Id.*

The Individual enrolled in several alcohol-related classes through his employer's employee assistance program (EAP). Ex. 15 at 122. The Individual completed an alcohol education class through the EAP on May 16, 2024, and a class related to supporting abstinence from alcohol through the EAP on September 19, 2024.⁵ Ex. C; Ex. D.

The Individual began dating his current girlfriend, with whom he currently resides, in March 2024. Tr. at 42. The girlfriend does not consume alcohol due to a health issue and has not observed the Individual consume alcohol. *Id.* at 43, 51. The Individual and his girlfriend participate in alcohol-free dates, physical fitness activities, and events through their church together in their free time. *Id.* at 49–50, 52, 74.

On August 1, 2024, the Individual met with the DOE Psychologist for a psychological assessment. Ex. 15 at 120. During the assessment, the Individual described his participation in the EAP classes and explained that he had learned that he had binge consumed alcohol as a coping mechanism to deal with the traumas he had experienced in his personal life. *Id.* at 121. The Individual indicated that he had not consumed alcohol since his arrest for DUI and expressed the intention to perhaps consume “a drink here or there [in the future] but not like [he] did before.” *Id.* at 122. The Individual provided a sample for Phosphatidylethanol (PEth)⁶ testing the results of which were negative for traces of alcohol consumption. *Id.* at 128. The Individual also provided the DOE Psychologist with the results of a PEth test that he had voluntarily taken on July 15, 2024, prior to the psychological assessment, which was also negative for traces of alcohol consumption. *Id.* at 123; Ex. B at 6.

⁵ In an undated, unsigned letter purportedly authored by a counselor with the EAP, the counselor indicated that the Individual continued to attend the support class after completing it on September 19, 2024, and expressed that he had learned that he used alcohol to cope with loss and grief. Ex. L at 13.

⁶ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol within three to four weeks of sample collection. Ex. 15 at 123, 128–29.

The DOE Psychologist indicated in her Report that the Individual had a history of extended periods of abstinence from alcohol “punctuated by episodes of binge drinking . . .” Ex. 15 at 124. Based on the Individual’s self-described recognition of his problematic alcohol consumption, participation in EAP classes, the evidence of his abstinence from alcohol, and the infrequency of the Individual’s historic episodes of binge drinking, the DOE Psychologist concluded that the Individual did not meet sufficient criteria for a diagnosis of AUD and that he did not habitually or binge consume alcohol to the point of impaired judgment. *Id.* at 124–25. She provided no recommendation for further treatment for the Individual. *Id.*

Following the psychological evaluation, the Individual provided samples for PEth testing in September 2024, November 2024, and January 2025, all of which were negative for traces of alcohol consumption. Ex. B at 7–9. In September 2024, the DUI charge against the Individual was dismissed *nolle prosequi*. Ex. J at 8.

The Individual continued attending sessions with the Therapist in the aftermath of his DUI arrest. Tr. at 15–16. According to the Therapist, the Individual came to understand that he was using alcohol maladaptively as a coping mechanism and “really realize[d] the seriousness of what he needed to do to repair his choices” after his DUI arrest. *Id.* at 14–16. In addition to cognitive behavioral therapy, the Therapist helped the Individual to develop a relapse prevention plan to support his abstinence from alcohol. *Id.* at 27–28. The Therapist perceived that the Individual’s decision making and emotional regulation improved following his DUI arrest, based both on the Individual’s clinical presentation and the collateral reports of members of the Individual’s family who also regularly met with the Therapist. *Id.* at 16–17. Following the Individual’s improvement, the Individual’s sessions with the Therapist decreased in frequency and, as of the date of the hearing, he was only in contact with the Therapist once monthly for telephonic check-in sessions. *Id.* at 19–20. According to the Therapist, the Individual’s prognosis is excellent, and he does not require any further treatment. *Id.*

On March 20, 2025, the Battery Against a Household Member charge against the Individual was dismissed for lack of prosecution. Ex. N at 16. In a sworn affidavit, the Individual’s counsel in connection with the criminal proceedings stated that the charges were “functionally dismissed” in September 2023 when a court granted the Individual’s counsel’s motion to exclude all witnesses and testimony after the prosecuting agency refused to provide required discovery. *Id.* at 7.

The Individual testified at the hearing that he had not consumed alcohol since his arrest for DUI and intended to permanently abstain from alcohol going forward. Tr. at 68–69, 86. According to the Individual, therapy and the “humbling” experience of the adjudication of his eligibility for access authorization had led him to conclude that he should not consume alcohol again. *Id.* at 86. He expressed the intent to continue attending classes through the EAP and meeting with the Therapist as necessary to support his abstinence from alcohol. *Id.* at 76.

V. ANALYSIS

Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (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.

Id. at ¶ 32.

While the LSO did not allege that the Individual's behavior presented concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, both of the incidents cited by the LSO as presenting security concerns under Guideline J arose after the Individual consumed alcohol to the point of intoxication. The Individual has consistently represented that he began binge drinking to cope with a series of traumatic events. There is substantial evidence that the Individual has recognized his maladaptive alcohol use, pursued interventions to help him resolve his maladaptive alcohol use, abstained from alcohol, and adopted a new, alcohol-free lifestyle. In light of the evidence that the Individual's maladaptive alcohol use emerged as a result of unusual and substantial traumas in the Individual's life, the Individual's criminal conduct occurred due to his alcohol misuse, and the Individual is unlikely to return to maladaptive alcohol use, I find that the Individual's criminal conduct occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment. Therefore, I find that the first mitigating condition is applicable and that the Individual has resolved the security concerns asserted by the LSO under Guideline J. *Id.* at ¶ 32(a).

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline J of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns asserted by the LSO. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals