



disclosed to the local security office (LSO) that he had been charged with a domestic violence-related offense after he allegedly brandished a firearm during an altercation with a girlfriend (Weapon Offense). Ex. 12 at 38. Following a review by the LSO, the security concerns presented by the Individual's conduct were mitigated and he maintained his access authorization. Ex. 6 at 24 (summarizing the adjudication of the Individual's eligibility for access authorization in a 2023 case summary).

In May 2024, the Individual submitted a Personnel Security Information Report (PSIR) disclosing that he had been arrested and charged with DUI on February 22, 2024. Ex. 8 at 29–30. The Individual subsequently met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 15 at 67. Following the evaluation, the DOE Psychologist issued a report of the evaluation (Report) in which he opined that the Individual binge consumed alcohol to the point of impaired judgment. *Id.* at 71.

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 8–10. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G and J of the Adjudicative Guidelines. *Id.* at 6–7.

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 in July 2025. The LSO submitted eighteen exhibits (Ex. 1–18). The Individual did not submit any exhibits. The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-25-0093 (Tr.) at 3, 14. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 55.

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

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 6. "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 Individual having been arrested and charged with DUI on two occasions and the opinion of the DOE Psychologist that the Individual binge consumed alcohol to the point of impaired judgment. Ex. 1 at 6. The LSO's allegations that the Individual experienced alcohol-related incidents away from work and binge consumed alcohol to the point of impaired judgment justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the other basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 6–7. "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 seven instances of unlawful

conduct disclosed for which the Individual was arrested or charged from 1995 to the 2024 DUI. Ex. 1 at 6–7. The LSO’s allegations that the Individual engaged in committed criminal conduct justify 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 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**

#### **A. Individual’s Alleged Criminal Conduct**

The Individual was charged with Driving with a Suspended/Revoked Driver’s License and Felony Burglary in 1995. Ex. 18 at 140, 275–77. The Individual’s driver’s license was suspended due to the number of traffic infractions he committed. Tr. at 41–42. The Individual had believed that his driver’s license would not be suspended so long as he paid the fines associated with the traffic infractions and was unaware of the suspension of his driver’s license until he was arrested. *Id.* The Individual denied recollection of the Felony Burglary offense. Ex. 14 at 61 (denying recollection of the offense in a 2023 response to a letter of interrogatory from the LSO); Tr. at 42–43 (testifying that he was questioned by law enforcement in connection with the theft of merchandise, which he attributed to several of his friends, but denying recollection of having been charged with any offense related to this matter).

The Individual was arrested and charged with Felony Criminal Damage to Property in 2006. Ex. 18 at 147. According to the Individual, the property damage in question occurred when he broke the door handle of a girlfriend’s vehicle trying to open the door during a dispute about financial matters. Ex. 14 at 60; Tr. at 39–40. The Individual successfully completed a diversion program to

resolve the charges related to this offense and the charges were expunged from his criminal record. Ex. 18 at 148.

The Individual was charged with Simple Assault in 2008 after a dispute with his wife and an order of protection was issued against him. Ex. 18 at 281; Tr. at 36. In his hearing testimony, the Individual indicated that his wife had called the police because she wanted him to leave the home during an argument over financial matters related to the potential dissolution of their marriage. Tr. at 37–38. The Individual denied that the dispute with his wife was physical and asserted that the charges were dropped. *Id.* at 36, 38.

In September 2014, the Individual was arrested and charged with DUI after a Breathalyzer estimated his blood alcohol content at .09. Ex. 18 at 149–50, 168. The Individual entered into a twelve-month diversion program in early 2015 to resolve the charges *Id.* at 150. The Individual participated in alcohol education classes and a Mothers Against Drunk Driving panel as part of the diversion program which he successfully completed in March 2016. *Id.*; Ex. 15 at 69.

On September 10, 2022, the Individual was arrested and charged with a Weapon Offense. Ex. 12 at 40. The Individual's girlfriend alleged to law enforcement that he had displayed a gun in a threatening manner during a domestic dispute. *Id.* The Individual claimed that the girlfriend had physically attacked him and threatened him with a knife following a verbal altercation and that he was collecting his belongings to leave when he was arrested. *Id.* at 38; *see also* Tr. at 28–29 (Individual alleging in his hearing testimony that the girlfriend made false allegations against him to hurt him because of an argument during their separation). The Individual denied that he had a gun in his possession during the altercation with the girlfriend and claimed that he “only had his gun holster on.” Ex. 12 at 38; *see also* Ex. 14 at 57 (stating in response to a letter of interrogatory that he had taken his gun holster from a closet when leaving the residence and had it “in [his] pocket and [the girlfriend] assumed it was a gun and called the police”); Tr. at 30, 32–33 (claiming at the hearing that he did not own a weapon and that he took the holster from the girlfriend because he had bought it for her as a gift and was reclaiming gifts he had bought for her when they separated). The charges against the Individual were dismissed in March 2023 after the girlfriend failed to appear in court on numerous occasions. Ex. 9 at 32; Ex. 18 at 142.

The Individual was arrested and charged with DUI in February 2024 after a law enforcement officer pulled the Individual over for changing lanes without signaling and the Individual refused to undergo a Breathalyzer test. Ex. 8 at 30. During the clinical interview with the DOE Psychologist, the Individual represented that he consumed two mixed drinks and one beer prior to driving and did not recognize that “he was as intoxicated as he was” when he decided to drive. Ex. 15 at 68–69. The Individual testified at the hearing that he pleaded guilty and entered into a diversion program through which he was required to attend an eight-hour alcohol education class, perform community service, and pay fines and fees. Tr. at 19, 21, 27, 52. The Individual further testified that he successfully completed the diversion program but provided no corroborating evidence of having done so. Tr. at 27–28, 52–53.

#### **B. Individual's Alcohol Consumption and Evaluation by the DOE Psychologist**

Following his 2014 arrest for DUI, the Individual abstained from alcohol until January 2018 when he resumed alcohol consumption. Ex. 18 at 253. From 2022 to 2023, the Individual's alcohol consumption increased due to his desire to "escape" financial difficulties. Ex. 15 at 68; Tr. at 49–50. At the hearing, the Individual admitted that he consumed alcohol to intoxication approximately monthly during this period. Tr. at 50.

The Individual met with the DOE Psychologist for the clinical interview on September 9, 2024. Ex. 15 at 67. The Individual denied having consumed alcohol to the point of intoxication since his February 2024 arrest. *Id.* at 68. He also reported having consumed no more than three alcoholic beverages in the thirty days prior to the psychological evaluation. *Id.* at 70.

At the request of the DOE Psychologist, the Individual provided a sample for Phosphatidylethanol (PEth)<sup>3</sup> testing at a laboratory. *Id.* The PEth test was positive at 34 ng/mL. *Id.* at 78. According to a medical doctor (MD) who reviewed the results of the test, studies have found PEth levels comparable to the Individual's consistent with consumption of "about 4 drinks/week." *Id.* at 77; *see also* William Ulwelling & Kim Smith, *The PEth Blood Test in the Security Environment: What it is; Why it is Important; and Interpretative Guidelines*, J. OF FORENSIC SCI., July 2018 at 4 (journal article cited by the MD listing estimated correlations between PEth levels and alcohol consumption based on research studies, including a recommendation that 20 ng/mL be used as the basis for a positive PEth test representing at least moderate alcohol consumption in the past month and citing to a study finding that an average PEth level of 24 ng/mL correlated to consumption of 4.1 alcoholic drinks per week among study subjects). The MD characterized the Individual's PEth level as consistent with "low" to "medium" risk alcohol consumption but opined that the PEth test would have been negative if the Individual's self-reported alcohol consumption was accurate. Ex. 15 at 76–77.

The DOE Psychologist issued the Report on September 21, 2024. *Id.* at 72. Therein, he opined that the Individual engaged in binge drinking. *Id.* at 71. This opinion was based on the Individual having "had a prior alcohol related event in his life prior to the recent arrest" and the PEth test results being inconsistent with the Individual's self-reported alcohol consumption. *Id.* The DOE Psychologist defined binge drinking as "consumption of five or more drinks over two hours." *Id.* at 68; *see also* *Personnel Security Hearing*, OHA Case No. PSH-25-0046 at 2, note 4 (2024) (indicating that the Substance Abuse and Mental Health Services Administration defines binge drinking for men as consumption of five or more drinks over two hours). The DOE Psychologist recommended that the Individual demonstrate rehabilitation by participating in a weekly substance abuse treatment program for at least four months followed by at least monthly "relapse prevention or maintenance group therapy sessions." *Id.* at 71. He further recommended that the Individual participate in an alcohol abstinence support group and abstain from alcohol for one year, demonstrating his abstinence from alcohol through monthly PEth testing. *Id.*

The Individual testified at the hearing that he decided to abstain from alcohol in September 2024, prior to meeting with the DOE Psychologist, due to exacerbation of a chronic health condition by alcohol consumption and concern that consuming alcohol could contribute to other chronic health

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<sup>3</sup> PEth is a biomarker for alcohol consumption that can be detected in blood for approximately thirty days following moderate or greater episodes of alcohol consumption. Ex. 15 at 76–77.

conditions from which other members of his family suffer. Tr. at 18–19, 50–51. However, the Individual did consume alcohol in September 2024 at a birthday party, which he characterized as “a mistake.” *Id.* at 17, 19. The Individual denied having consumed alcohol again until April 2025, approximately three months prior to the hearing, when he said that he consumed two beers. Tr. at 14–15. The Individual testified that he consumed the alcohol, despite his intention to abstain, because he was at a party “and [] just was in a celebratory mood . . . .” *Id.* at 15. The Individual intends to abstain from alcohol in the future and to attend Alcoholics Anonymous (AA). *Id.* at 25. However, he had not begun attending AA as of the date of the hearing nor did he undergo alcohol testing following his evaluation by the DOE Psychologist. *Id.* at 17, 20–21.

The DOE Psychologist opined at the hearing that the Individual had not demonstrated rehabilitation or reformation. *Id.* at 58. The DOE Psychologist cited the Individual’s alcohol consumption despite his intention to abstain and admission that he would benefit from attending AA, which the DOE Psychologist stated was something that he was “uncertain as to why someone would [do]” “if he didn’t have a problem,” as factors supporting the conclusion that the Individual had not demonstrated rehabilitation or reformation. *Id.* at 59. The DOE Psychologist opined that the Individual had a “fair” prognosis and needed to “fully embrace[] the idea that he needs treatment . . . .” *Id.* at 60.

## V. ANALYSIS

### A. Guideline G

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; or,
- (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.

Before addressing the mitigating conditions, I will first consider the LSO’s allegation that the Individual engaged in binge drinking. The PEth test does not definitively show that the Individual

engaged in binge drinking, and in fact indicates that the Individual may have been engaged in low-risk alcohol use in the month prior to the test. However, the Individual admitted in his hearing testimony that from approximately 2022 to 2023 he consumed alcohol to the point of intoxication approximately monthly. Moreover, the Individual's extremely low estimate of the number of alcoholic drinks that he consumed in the month prior to the PEth test, which the MD opined was inconsistent with even the relatively low amount of alcohol consumption reflected on the PEth test, is evidence that the Individual underreported his alcohol consumption to the DOE Psychologist during the clinical interview. Based on Individual's recent DUI, his admission to consuming alcohol to intoxication approximately monthly in the relatively recent past, and the implication from the PEth test that the Individual has underreported his alcohol consumption, I find that, although there is not strong evidence that the Individual engaged in binge drinking, there is a sufficient basis to support the LSO's allegation.

Considering that ten years elapsed between the Individual's 2014 DUI and his 2024 DUI, the passage of a little over one year since his latest DUI is insufficient for me to conclude that the conduct will not recur. There is no indication in the record that the Individual's arrests occurred under unusual circumstances and, considering that he has been arrested and charged with DUI multiple times, I find that the conduct is not so infrequent that it is unlikely to recur. Regarding the alleged binge drinking, the Individual provided no evidence other than his own testimony that the behavior is not ongoing. Therefore, I cannot conclude that binge drinking behavior by the Individual occurred so long ago, so infrequently, or under such unusual circumstances that it is unlikely to recur. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual has not demonstrated any action to overcome his alcohol-related issues besides completing the court-ordered alcohol class. Court-ordered classes were insufficient to prevent the Individual from reoffending following his 2014 DUI, and I am not convinced that they will suffice in this case. Moreover, the Individual admits that he consumed alcohol against the recommendation of the DOE Psychologist in April 2025 and has produced no alcohol testing to substantiate that he has abstained from alcohol for any period of time. Accordingly, I find the second mitigating condition inapplicable. *Id.* at ¶ 23(b).

The third and fourth mitigating conditions are irrelevant in this case because the Individual does not allege that he entered into or completed any alcohol-related treatment program. *Id.* at ¶ 23(c)–(d).

Having concluded that none of the mitigating conditions are applicable, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

## **B. 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.

The Individual has been arrested and charged for criminal conduct during multiple stages of his life, sometimes with a decade or more passing between offenses, only for alleged criminal conduct to recur. Considering that the Individual's latest offense, the 2024 DUI, occurred only a little more than one year prior to the hearing, the passage of time does not suggest that the Individual is unlikely to commit criminal behavior in the future. Moreover, with the exception of the Individual's 1995 offenses, all of the alleged criminal conduct occurred during ordinary domestic disagreements or while the Individual was engaged in routine social drinking. These circumstances are not unusual, and therefore I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not allege that he was pressured or coerced into committing criminal conduct. *Id.* at ¶ 32(b).

The Individual does not dispute that he committed the DUI offenses, Driving with Suspended License offense, or the 2006 Felony Damage to Property offense. While the Individual denies that he committed the other offenses, the fact that the Individual has been accused by multiple women of criminal conduct in connection with domestic disputes, his admission to the 2006 Felony Damage to Property offense in connection with one of those domestic disputes, and his inconsistent and illogical explanations for the September 2022 Weapon Offense lead me to conclude that there is at least some evidence that he committed the offenses, even though the women ultimately did not cooperate with the prosecution of the 2008 and 2022 offenses. There is no evidence in the record concerning the Felony Burglary charge or how it was resolved. Considering that the Individual does not dispute committing several of the offenses, and that he has brought forth no evidence corroborating his account of the Felony Burglary offense or the 2008 and 2022 domestic disputes, I cannot find the third mitigating condition applicable. *Id.* at ¶ 32(c).

The Individual successfully completed a diversion program to resolve the charges associated with the 2024 DUI. However, this is the third diversion program in which the Individual has participated. Considering that the Individual has been arrested and charged with unlawful conduct after two previous diversion programs, I do not consider the Individual's successful completion of the 2024 diversion program sufficient to establish rehabilitation. The Individual has not brought forward evidence of job training or higher education, good employment record, or constructive community involvement following his 2024 DUI, and accordingly I find that the fourth mitigating condition is inapplicable. *Id.* at ¶ 32(d).



Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G and 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 not brought forth sufficient evidence to resolve the security concerns asserted by the LSO. 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.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals