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

In the Matter of: Personnel Security Hearing )  
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Filing Date: April 17, 2025 )  
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Case No.: PSH-25-0106

Issued: -August 22, 2025

**Administrative Judge Decision**

Erin C. Weinstock, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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."<sup>1</sup> 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 an access authorization. Exhibit (Ex.) 1 at 6.<sup>2</sup> In August 2024, the Individual was arrested and charged with Driving While Intoxicated (DWI). *Id.* As a result of these charges, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI), which he completed in August 2024. Ex. 11. After receipt of his responses, the LSO requested that the Individual undergo a psychological evaluation in October 2024 by a DOE-consultant psychologist (DOE Psychologist), which resulted in a finding that the Individual "habitually, or binge consumes alcohol to the point of impaired judgment." Ex. 16 at 230–31. The Individual underwent a phosphatidyl ethanol (PEth)<sup>3</sup> test as a

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<sup>1</sup> 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.

<sup>2</sup> References to the Local Security Office's (LSO) exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

<sup>3</sup> PEth is a biomarker of alcohol consumption which is present for up to thirty days after a subject consumes alcohol. Ex. 16 at 244. "PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption." *Id.*

part of this evaluation which returned a result that the medical doctor interpreting the test characterized as indicative of “medium” alcohol consumption. *Id.* at 246. The LSO also considered concerns relating to a 2023 arrest for assault and three arrests from 2009. Ex. 1 at 6–7.

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

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 nineteen exhibits (Ex. 1–19). The Individual submitted eight exhibits (Ex. A–H). The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-25-0106 (Tr.). The LSO called the DOE Psychologist to testify. *Id.*

## II. THE SECURITY CONCERNS

Guideline G, under which the LSO raised security concerns, relates to security risks arising from excessive alcohol consumption. “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. In citing Guideline G, the LSO relied upon the DOE Psychologist’s November 2024 finding that the Individual habitually or binge consumes alcohol to the point of impairment and the Individual’s August 2024 DWI arrest.<sup>4</sup> Ex. 1 at 6. The information cited by the LSO justifies its invocation of Guideline G. *See* Adjudicative Guidelines at ¶ 22(a), (c) (conditions that could raise a security concern include “alcohol related incidents away from work . . . [and] habitual or binge consumption of alcohol to the point of impaired judgement, regardless of whether the Individual is diagnosed with alcohol use disorder”).

Guideline J, under which the LSO raised additional security concerns, provides: “Criminal activity creates doubt about a person’s judgement, 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. Conditions that could raise a security concern under Guideline J include: “evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” *Id.* at ¶ 31(b). In citing Guideline J, the LSO relied upon the Individual’s 2024 DWI arrest, his 2023 arrest for assault, and his 2009 arrests related to robbery and burglary. Ex. 1 at 6–7. This derogatory information adequately justifies the LSO’s invocation of Guideline J.

## III. REGULATORY STANDARDS

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<sup>4</sup> The LSO also cited the Individual’s positive PEth test result. As we have stated before, a positive PEth test alone is not sufficient to constitute a security concern. *See, e.g., Personnel Security Hearing*, OHA Case No. PSH-25-0027 at n. 3 (2025). Therefore, I find that that this allegation was not properly raised by the LSO as a discrete security concern, and I will not analyze it as such here.

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 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 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.* at § 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 March 2009, when the Individual was seventeen years old, he was arrested related to a robbery. Ex. 15 at 222; Ex. 19 at 497–98. The Individual spoke to the police about the robbery and was eventually released without formal charges being filed by the city in which the criminal conduct allegedly occurred. Ex. 19 at 497; Ex. B at 3 (letter from the city stating that no charges were filed against the Individual related to the March 2009 robbery). In June 2009, the Individual was arrested related to a burglary. Ex. 15 at 22. The Individual was released after speaking to the police, and there were never any court proceedings related to this arrest. Ex. 19 at 498. In December 2009, the Individual was arrested and charged with felony robbery and use of a firearm. Ex. 15 at 223. These charges were subsequently dismissed. *Id.*; Ex. B at 2. The Individual testified at the hearing that he does not see the people involved in these incidents anymore. Tr. at 27. He further testified that he thought all three 2009 incidents listed in the SSC were related to the same incident. *Id.* at 25–26. The Individual provided this information to the DOE prior to when he was initially granted access authorization around 2017. Ex. 19 at 497–98.

In 2023, the Individual was charged with assault after an altercation with his stepfather. Ex. 10 at 40. The Individual said that he went to his stepfather's house to talk to him about threatening text messages and voicemails that the stepfather had been leaving on his mother's phone. Ex. 12 at 52; Tr. at 18–19. The Individual said that he attempted to have a discussion with his stepfather, and the stepfather tried to hit him. Tr. at 19. The Individual testified that he hit the stepfather back to try to defend himself, and then he left his stepfather's house. *Id.* The stepfather said that the Individual hurt him, but according to the Individual the stepfather never sought medical treatment to document any injuries. *Id.* at 20. The Individual stated that after this incident, the stepfather began to leave threatening voicemails on the Individual's phone. *Id.* The Individual testified that

he was placed in a six-month diversion program, pursuant to which the case would be dismissed if he and his stepfather went six months without contact. Ex. 9 at 37; Tr. at 20–21. The Individual testified that the charges were dismissed when the diversion program was completed in August 2024, but did not provide documentation of how these charges were resolved. Tr. at 21–22. While the stepfather is still married to the Individual’s mother, the Individual’s mother does not live with the stepfather, and the Individual knows he cannot insert himself into any conflict. *Id.* at 22. He said if his mother and stepfather had an issue in the future he would call the police. *Id.*

In August 2024, the Individual was arrested and charged with DWI. Ex. 8 at 34. The Individual had consumed one Long Island iced tea and one or two shots prior to driving. Ex. 11 at 42; Tr. at 28. The Individual pled guilty to a lesser charge, and the DWI charge was dismissed. Tr. at 35; Ex. B at 1. He paid a fine and court costs. Ex. B. at 1. The Individual also voluntarily took a course offered by his home state about substance use and driving, which he completed on October 12, 2024. Ex. C; Tr. at 35–36. The Individual said the course taught him about how dangerous it can be to drive when you are impaired in any way. Tr. at 38–39.

As a result of his DWI arrest, the Individual underwent a psychological evaluation in October 2024. Ex. 16. As a part of this evaluation, the Individual underwent a PEth test, which came back positive at 52 ng/mL. *Id.* at 230. The Individual told the DOE Psychologist he had likely consumed alcohol three times in the three months prior to the evaluation. *Id.* at 229. He said approximately one or two weeks prior to the evaluation, he consumed “four or five shots of liquor over five hours,” and the week before the evaluation he went to a wine tasting where he “tasted about 40 different wines” and had one mixed drink over two hours. *Id.* The Individual could not estimate how much alcohol he consumed at the wine tasting. *Id.* He also provided the DOE Psychologist with an estimate of his alcohol consumption on the day of his DWI arrest; however, comparing the Individual’s estimated blood alcohol content based on his self-described alcohol consumption and stature to his actual blood alcohol content as measured following his arrest, the DOE Psychologist concluded that the Individual was underreporting his alcohol consumption. *Id.* at 229–30. Consequently, the DOE Psychologist inferred that the Individual was not a reliable source of information concerning the amount of alcohol he consumed and was underreporting his alcohol consumption. *Id.* at 230. After the Individual completed the evaluation, the DOE Psychologist concluded that the Individual habitually or binge consumes alcohol to the point of impaired judgment. *Id.* at 230. In order for the Individual to show evidence of rehabilitation or reformation, the DOE Psychologist stated that the Individual should: (1) “participate in a substance abuse treatment program that includes weekly group or individual therapy” for a minimum of four months; (2) attend a support group like Alcoholics Anonymous (AA) and work the AA steps with a sponsor or attend SMARTRecovery at least weekly for at least one year; (3) participate in at least monthly relapse prevention or maintenance group therapy sessions following his four months of weekly therapy; and (4) stop consuming alcohol and undergo PEth tests to document his abstinence for at least one year. *Id.* at 231.

The Individual began to attend AA meetings in February 2025 up through the date of the hearing. Tr. at 43–44; Ex. H (a dated list of the weekly AA meetings that the Individual attended with contact numbers for the meeting leaders and email attendance confirmations for several of the meetings). The Individual attended meetings about once a week depending on his schedule. Tr. at 44. He introduces himself as an alcoholic at meetings. *Id.* at 46. The Individual does not have an

official sponsor, but there is another attendee who has said that he would be the Individual's sponsor, and the attendee calls to check in approximately every other week. *Id.* at 45–46. The Individual has not accepted the offer of sponsorship. *Id.* The Individual said the biggest thing that he has learned from AA is that addiction can affect everything around you. *Id.* at 48. He finds the AA meetings valuable and plans to continue attending. *Id.* at 50.

The Individual started attending a weekly substance abuse group program through his healthcare provider in March 2025. *Id.*; Ex. F at 2. The social worker supervising the group said that the Individual attended the group regularly and is an active participant. Ex. F at 2 (letter discussing the Individual's participation in the program). Each week at these meetings everyone shares how their week went, and then they discuss a planned topic. Tr. at 55. After the Individual completes sixteen weeks of the substance abuse group, he will try to get into an aftercare group. *Id.* at 63. At the time of the hearing, the Individual had not completed all sixteen weeks of the class due to scheduled breaks in the class, but he was unsure exactly how many weeks he had completed. *Id.* at 61–62.

The Individual has been seeing a counselor since July 2023. *Id.* at 51; Ex. F at 1. They meet about once every three weeks. Tr. at 54. The Individual began seeing the counselor to address some mental health issues he had been experiencing, but they have spent time talking about the Individual's use of alcohol. *Id.* at 51–52.

At first, the Individual testified that he last consumed alcohol in August 2024. *Id.* at 64–65. However, when he was reminded that he did not speak with the DOE Psychologist until October, he amended his testimony to say that he last consumed alcohol in October 2024. *Id.* at 65. He submitted three blood tests dated May 9, 2025, June 6, 2025, and July 1, 2025, to support this testimony.<sup>5</sup> Ex. E. Blood serum tests of this type can detect alcohol in a person's system for up to twelve hours after they consume alcohol. *Blood Alcohol Level*, MEDLINEPLUS <https://medlineplus.gov/lab-tests/blood-alcohol-level/> (last visited August 21, 2025). All three of the Individual's tests came back negative for alcohol in his system.<sup>6</sup> Ex. E. When asked about his future plans for alcohol consumption, the Individual said he does not “have any thoughts of actually drinking really ever again.” Tr. at 77. However, he continued on to say he was “not going to say [he] might not go to [] a winery or something in California or something like that . . . to see what it's like or something like that.” *Id.*

The Individual explained that having gotten the DWI and taking the classes about impaired driving and the effects of alcohol had made him more cautious and responsible. *Id.* at 71. He acts as a designated driver for friends when they go to events, and it has helped him determine who his real friends are. *Id.* at 71–72. He has stopped attending social activities where the purpose is only to consume alcohol and only attends events where people want to make social connections with

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<sup>5</sup> The tests that the Individual submitted were blood serum tests rather than PEth tests. The Individual testified that he told his doctor that he needed a “blood test” to provide to DOE to show he was not consuming alcohol. Tr. at 67. He did not understand that a PEth test and a blood serum test were different. *Id.* at 68.

<sup>6</sup> These tests have a detection limit of 10 mg/dL or 0.01%. *Test Definition: ALC*, MAYO CLINIC LABORATORIES <https://www.mayocliniclabs.com/api/sitcore/TestCatalog/DownloadTestCatalog?testId=8264> (last visited Aug. 21, 2025). The legal limit of intoxication is 80 mg/dL or 0.08%. *Id.*

others. *Id.* at 72. He feels like he has a strong community of people who support his sobriety, including his mother, his sister, his girlfriend, and other members of his family. *Id.* at 73.

The Individual also provided nine letters from friends and family members that showed his involvement with his community, spoke to his character, and emphasized their support of him. Ex. D. The letters highlighted his regular involvement with charitable efforts in his community and his commitment to providing daily assistance to a family member with a disability. *Id.* Specifically, the letters mentioned his long-term involvement with a local holiday toy drive, financial literacy programs for children, a local community building organization, and his church. *Id.*

The DOE Psychologist stated that, as of the hearing, the Individual had not demonstrated rehabilitation because he had not yet completed the treatment program. Tr. at 96. He explained that the Individual was “making good progress . . . but not there yet.” *Id.* The DOE Psychologist went on to say that the Individual’s prognosis would be “good” if he continued on his current path. *Id.* He uses a scale of “very good,” “good,” “average,” “guarded,” and “poor.” *Id.* at 97.

The DOE Psychologist further testified that he believed that the Individual documented his participation in the type of substance abuse treatment program that he recommended. *Id.* at 89. He also said that the Individual was making good progress on attending AA meetings, but he wanted to see the Individual engage with the process more by finding a sponsor and working the steps of the program. *Id.* at 89–90. The DOE Psychologist said that the friend in AA who checks in on him did not have the same weight as a formal sponsor because “they’re not really discussing the steps, they’re not really discussing how he’s progressing or looking at the various antecedents of his drinking, what role drinking played in his life.” *Id.* at 90. He also explained that while the Individual had testified that he had not consumed any alcohol since meeting with the DOE Psychologist, the DOE Psychologist would have had more confidence in the Individual’s testimony if it had been supported by a PEth test or other laboratory testing that covered the entire time period the Individual alleges he was abstinent. *Id.* at 91. The two tests<sup>7</sup> that the Individual provided prior to the hearing were a different kind of blood test that does not provide the kind of “30-day look” that a PEth test provides. *Id.* Finally, the DOE Psychologist stated that the follow-on program to the Individual’s substance abuse program looked like the kind of relapse prevention program that he had recommended, though the Individual had not started that program at the time of the hearing. *Id.* at 93.

## V. ANALYSIS

### A. Guideline G

An individual may be able to mitigate security concerns under Guideline G though the following conditions:

- 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;

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<sup>7</sup> The Individual provided two blood alcohol tests prior to the hearing, and the DOE Psychologist’s testimony was based on his review of those tests. Ex. E at 1–2; Tr. at 91.

- 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 alcohol 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.

Mitigating factor (a) does not apply here because the Individual's DWI and his pattern of binge or habitual consumption of alcohol both occurred within one year of the hearing. The Individual did not indicate that these incidents and behaviors occurred due to unusual circumstances. Because of the recency of the DWI and the habitual nature of the Individual's alcohol consumption, I cannot say that so much time has passed or the behavior was so infrequent or that it happened under unusual circumstances. Therefore, mitigating factor (a) is not applicable.

The Individual did acknowledge his maladaptive alcohol use and provided evidence of actions taken to overcome the problem. However, the testing that the Individual provided as evidence that he had been abstinent in accordance with treatment recommendations was inconsistent with the DOE Psychologist's recommendations and would not have detected evidence of alcohol consumption in the Individual's body for a sufficient period of time to corroborate his claimed abstinence from alcohol as PEth testing might have. Moreover, in light of the Individual's inconsistent testimony regarding his sobriety date, I do not have an adequate basis on which to credit the Individual's claim that he has maintained abstinence since October 2024. Without additional evidence to establish his abstinence, I cannot say that the Individual has mitigated the security concern pursuant to mitigating factor (b).

The Individual is participating in an alcohol-related treatment program, and he does not have any history of treatment and relapse. It is clear from the record that he has made good progress on some of the DOE Psychologist's recommendations. However, I have some concerns about the duration of his participation in his treatment program and his level of engagement with AA. These shortcomings in meeting the DOE Psychologist's recommendations lead me to conclude that the Individual's progress is not sufficient to mitigate the security concerns. Thus, I cannot say that the Individual has been making satisfactory progress on his treatment recommendations. Therefore, the security concerns are not mitigated pursuant to mitigating factor (c).

The Individual has not completed his treatment program or even begun the required aftercare. As such, he has not mitigated the security concerns pursuant to mitigating factor (d).

Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

## **B. Guideline J**

An individual may be able to mitigate security concerns under Guideline J though the following conditions:

- (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 the Individual's 2009 arrests related to robbery and burglary are mitigated pursuant to mitigating factors (a) and (d). These incidents occurred over fifteen years ago, and the Individual was seventeen years old at the time of these incidents. The Individual testified that he no longer sees the people involved in these incidents. Moreover, while the Individual has engaged in criminal conduct since his 2009 arrests, that subsequent criminal conduct is of such a different nature from the alleged 2009 offenses that I do not consider the recent criminal conduct to be indicative of an ongoing pattern. As such, the 2009 criminal behavior is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment. The Individual has also clearly taken significant steps to be positively involved in his community in the time since these incidents. Therefore, it is also clear that he has been successfully rehabilitated from these incidents.

As to the Individual's 2023 assault charge, it occurred recently, and, while he did describe unusual circumstances under which he claims the incident occurred, he did not provide any corroborating evidence for his testimony. Without proof of the disposition of the case and support for his description of the circumstances, I cannot find that this incident occurred under such unusual circumstances that it is unlikely to recur. Therefore, the security concern is not mitigated pursuant to mitigating factor (a). The Individual did not allege that he was pressured or coerced into committing this act, so mitigating factor (b) does not apply. The Individual admitted that he did hit his stepfather, so mitigating factor (c) is not applicable. Mitigating factor (d) is inapplicable because of the recency of the incident, the fact that the Individual did not bring forth evidence of compliance with the diversion program and any other court-ordered interventions related to the incident, and the lack of evidence regarding when the Individual's community service began.

Without information showing that the Individual's community service involvement began after this incident, I cannot say that participating in these activities rehabilitates him.

The only remaining basis for the concern under Guideline J is the Individual's DWI. Because the incident was recent, and the Individual has not resolved the underlying alcohol-related security concerns that led to that arrest, I cannot say that he has resolved the security concerns under Guideline J. It cannot be mitigated pursuant to mitigating factor (a) because the incident occurred less than a year prior to the hearing while the Individual was attending the kind of social event that he seemed to have regularly attended. There is no evidence that he was pressured or coerced into the actions that led to the incident, so mitigating factor (b) does not apply. The Individual admitted he consumed alcohol before driving his vehicle, so mitigating factor (c) does not apply. Finally, mitigating factor (d) does not apply because the Individual has not had sufficient time in his treatment program to rehabilitate himself from the DWI. As explained above, it is unclear that the Individual's community service occurred after this incident, so I cannot say his participation rehabilitates him.

Accordingly, I find that the Individual has not resolved all of 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 all of 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.

Erin C. Weinstock  
Administrative Judge  
Office of Hearings and Appeals