



On June 19, 2019, the LSO issued the Individual a letter (Notification Letter) in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. The Individual exercised her 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 hearing. The LSO submitted fourteen numbered exhibits (Ex. 1–14) into the record, and the Individual submitted eleven lettered exhibit (Ex. A–K). The LSO presented the testimony of the DOE Psychologist and the Individual presented the testimony of six witnesses, including her own testimony.

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

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as one of the bases for denying the Individual a security clearance. Ex. 1.

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Notification Letter listed as relevant facts: the DOE Psychologist's opinion that the Individual was a habitual and heavy consumer of alcohol; the Individual's June 2018 arrest for DWI; and, the Individual's prior arrest for DWI in 2013. Ex. 1 at 1. The Individual's alcohol-related incidents away from work and habitual consumption of alcohol to the point of impaired judgement were additionally cited as facts justifying the LSO's invocation of Guideline G in the Notification Letter. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO also cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as a ground for revoking the Individual's security clearance. Ex. 1.

Certain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern under Guideline I. *Id.* The Notification Letter cited the DOE Psychologist's opinion that the Individual's lack of candor constitutes a personality condition that undermines her trustworthiness as the only relevant fact with respect to this security concern. Ex. 1 at 2. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgement, stability, reliability, or trustworthiness justifies the LSO's invocation of Guideline I in the Notification Letter. Adjudicative Guidelines at ¶ 28(a).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should

err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (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 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. 10 C.F.R. § 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 was arrested and charged with DWI in 2013 after being pulled over for speeding and failing a field sobriety test. Ex. 8. The LSO conducted a personnel security interview (PSI) of the Individual in 2013 after her first arrest for DWI, during which the Individual reported having consumed “a couple of drinks” in a restaurant prior to her arrest. Ex. 13 at 9. The Individual attributed her failure of the field sobriety tests to distractions due to “wearing a little jacket” on a cold night and the arresting officer talking while administering the tests. *Id.* at 13. The Individual expressed that she “fe[lt] that [she was] not guilty” of the DWI. *Id.* at 21. The Individual indicated that her future intentions as to alcohol were to “be more responsible and [] not drive [] after [she had consumed] a drink or two.” *Id.* at 37. The Individual was subsequently questioned about her alcohol use during a routine reinvestigation of her clearance and told an Office of Personnel Management (OPM) investigator that she consumed two to four beers in a sitting once or twice each month, did not drink to the point of intoxication, and did not drive after drinking as a precaution. Ex. 14 at 150–51.

On June 4, 2018, the Individual submitted a personnel security information report to the LSO disclosing that she had been arrested and charged with DWI in the early morning hours of June 2, 2018, after she failed a field sobriety test. Ex. 6. The Individual reported that her blood alcohol content (BAC) was measured at .16 after her arrest. *Id.* In her response to the LOI, the Individual reported that she had consumed three beers and one shot of hard alcohol prior to her arrest. Ex. 9 at 2. With respect to her future intentions regarding alcohol, the Individual promised that she would “make wise decisions . . . [and] never again drink and operate a vehicle . . . .” *Id.* at 8.

In March 2019, the DOE Psychologist conducted a psychological assessment of the Individual which included a clinical interview, psychological testing, and the administration of a phosphatidylethanol (PEth) test to measure whether the Individual had consumed significant quantities of alcohol within the three to four weeks prior to the psychological assessment. Ex. 10. Prior to the clinical interview, the DOE Psychologist calculated that the Individual’s BAC on the night of her 2018 DWI would have been no more than .09g/210L if she had consumed the amount of alcohol she had reported in her response to the LOI. *Id.* at 3. Therefore, the DOE Psychologist concluded that the Individual had underreported her alcohol consumption on the night of the 2018 DWI in her response to the LOI. *Id.* When confronted with this information during the clinical interview, the Individual revised her estimate of her alcohol consumption on the night of her 2018 DWI to two craft beers and two shots of hard alcohol. *Id.* However, the DOE Psychologist calculated that the Individual’s BAC could not have exceeded .11g/210L if her latest report was

accurate, and therefore inferred that the Individual was still misrepresenting the amount of alcohol that she had consumed on the night of her arrest. *Id.*

During the clinical interview, the Individual reported that she consumed no more than three to five drinks once per month. *Id.* at 4. She reported that she had last consumed alcohol four or five days prior to meeting with the DOE Psychologist when she consumed three drinks at dinner with family. *Id.* However, the results of the PEth test were positive at a level of 186 ng/mL. *Id.* at 13. According to the physician who provided the results of the PEth test to the DOE Psychologist, “the typical half-life of PEth in the blood is approximately six days, meaning that five days before the specimen was drawn her PEth would have been over 300 ng/mL.” *Id.* According to the physician, PEth levels above 200 ng/mL are consistent with drinking at least four drinks in a day several times each week, and the Individual would have met the World Health Organization’s “high risk” level of alcohol consumption if her PEth level exceeded 300 ng/mL. *Id.* Accordingly, the DOE Psychologist inferred that the Individual was consuming more alcohol than she admitted during the clinical interview. *Id.* at 5.

The DOE Psychologist also administered the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF) psychological test to the Individual. In her responses to the questions presented in the test, the Individual denied common minor faults such as occasionally getting angry, gossiping, not liking everyone she knows, and worrying about her looks. *Id.* at 6–7. The DOE Psychologist opined in his report that the test results supported his belief that the Individual was minimizing her derogatory behaviors. *Id.* at 7. The DOE Psychologist noted that the Individual had previously misrepresented her role in a fight, characterized officers who arrested her for DWI as demanding and forceful, and described her 2018 arrest for DWI as “a bump in her journey” in an effort to make herself appear “right” and “virtuous.” *Id.*

The DOE Psychologist’s Report concluded that the Individual was a habitual and heavy consumer of alcohol. *Id.* at 8. The DOE Psychologist recommended that the Individual demonstrate her rehabilitation or reformation by: (1) abstaining from alcohol, and documenting her abstinence by undergoing PEth tests every six weeks for nine months; and (2) either (a) participating in an intensive outpatient program for four weeks and aftercare for nine months or (b) actively participating in Alcoholics Anonymous (AA), including attending at least three meetings each week, engaging a sponsor, and working AA’s twelve-step program also for nine months. *Id.*

The Report also indicated that the Individual’s lack of candor constituted an emotional, mental, or personality condition that could impair her judgement, reliability, or trustworthiness. *Id.* at 8. The DOE Psychologist recommended that the Individual treat this condition by undergoing verbal therapy with an experienced therapist to address the insecurities that motivated her intolerance of her faults for such time as the therapist deemed appropriate. *Id.* at 8–9.

At the hearing, the Individual offered the testimony of her mother, a family friend, a co-worker, and a former team lead as character witnesses. Each of the character witnesses testified that they believed the Individual to be honest and trustworthy. Tr. at 17, 23, 52. The family friend did not have any knowledge of the issues giving rise to the security concerns, and the other two character witnesses expressed that they were shocked when they learned that the Individual had been arrested for DWI. *Id.* at 11, 19, 31.

The Individual's mother testified that she sees the Individual on a daily basis, and that, although she occasionally consumed alcohol with the Individual in the past, she had not seen the Individual consume alcohol since her 2018 arrest for DWI. *Id.* at 55, 60. The Individual's mother testified that she had discussed the DWI with the Individual and that the Individual had admitted that she had driven drunk and should not have. *Id.* at 56–57. The Individual's mother also indicated that the Individual had told her that she was going to counseling to save her job, but that the Individual did not think that she needed counseling. *Id.* at 62–63.

The Individual provided documentation demonstrating that she had been attending counseling with a Licensed Professional Clinical Counselor (LPCC) (Individual's Counselor) since July 22, 2019. Ex. F; Ex. H. The Individual's Counselor testified that the Individual attended individual counseling once a week and group counseling twice each week. Tr. at 40. The Individual's Counselor indicated that she did not review the DOE Psychologist's Report thoroughly nor did she and the Individual discuss the Individual's 2013 DWI in depth because it was dismissed. *Id.* at 43. Further, the Individual's Counselor could not remember the Individual describing the circumstances of her 2018 arrest for DWI except that she had been socializing with friends and received the DWI. *Id.* at 42. Finally, she and the Individual had not discussed whether the Individual operated a vehicle after drinking on other occasions. *Id.* at 41–42.

The Individual's Counselor reported that the Individual had described herself as a social drinker in the past, and that the Individual reported drinking up to five drinks on two or three weekends each month. *Id.* at 44–45. The Individual's Counselor testified that she had not observed any minimization or lack of candor on the part of the Individual in their one-on-one sessions, and that she believed that the Individual had abstained from alcohol prior to beginning their counseling program. *Id.* at 45–46, 51.

The Individual's Counselor testified that the counseling program in which the Individual was enrolled was three months in duration, but that the Individual would benefit from additional counseling to address grief and loss stemming from the death of her sister some years ago. *Id.* at 47. The Individual's Counselor indicated that the Individual had requested urine tests to demonstrate her abstinence from alcohol during the course of treatment, and the Individual's Counselor testified that she believed that the Individual had abstained from alcohol during counseling. *Id.* at 49–51; *see also* Ex. D (showing that the Individual's urine tested negative for alcohol on July 22, 2019); Ex. G (showing that the Individual's urine tested negative for alcohol on August 12, 2019). The Individual's Counselor opined that she does not believe that the Individual has a problem with alcohol, and that the Individual can return to controlled drinking in the future. Tr. at 50–51.

The Individual testified that, on the night of her 2018 DWI, she consumed three “tall” beers at dinner beginning at 5:00 p.m., and then went to a club with friends at 11:00 p.m., where she consumed two shots of hard alcohol and four craft beers until approximately 1:30 a.m. *Id.* at 74–75. The Individual further testified that she knew she should not have driven, but was driving a friend's daughter home and felt that it was better that she drove than the friend's daughter, who was young. *Id.* at 76. The Individual said that she had probably consumed a comparable amount of alcohol prior to her 2013 DWI. *Id.* at 77. The Individual maintained that she had never consumed more than two drinks before driving except on the two occasions on which she was arrested and charged with DWI. She affirmed this testimony even after the DOE counsel challenged her with the high probability that her statement was in fact untrue. *Id.* at 78–79.

The Individual admitted that she had understated her drinking to the LSO to present herself in the best light, and explained that she had not corrected her false statement because she did not want to justify her alcohol consumption. *Id.* at 79–81. The Individual also admitted to having underreported the extent of her alcohol usage to law enforcement and to the DOE Psychologist in order to protect herself from having to explain her high alcohol consumption. *Id.* at 81–83. The Individual further explained that she tended to minimize negative aspects of her behavior to “authority figures” to protect herself. *Id.* at 100.

The Individual said that, since 2013, she had consumed an average of six drinks per sitting on weekends and up to ten drinks on various occasions. *Id.* at 86–87. The Individual indicated that she had consumed three beers on the Saturday prior to the psychological assessment in March 2019. *Id.* at 88–89. The Individual reported that she had last consumed alcohol in May 2019. *Id.* at 89.

The Individual testified that she found counseling useful, and that she needed help to acknowledge her tendency to underreport her drinking. *Id.* at 98. The Individual further testified that she had requested the urine tests from the Individual’s Counselor to prove that she was abstaining from alcohol during the counseling. *Id.* at 100–01. The Individual asserted that she had retained the DOE Psychologist to provide a follow-up PEth test in August 2019, and that the results of the test were negative for evidence of alcohol consumption. *Id.* at 102; *see also* Ex. E (reporting to the DOE Psychologist that the Individual’s test results were negative for PEth).

The Individual presented evidence that she had completed community service, a DWI course, a Mothers Against Drunk Driving impact panel, and random alcohol testing as part of her supervised probation. *Id.* at 103; Ex. A; Ex. B; Ex. C. The Individual indicated that she had completed her supervised probation in February 2019, and was subject to unsupervised probation until December 2019. Tr. at 103. The Individual admitted violating her probation on at least two occasions when she had consumed alcohol after completing the supervised phase of her probation (and thus was no longer subject to alcohol testing.) *Id.* at 104. The Individual opined that she does not believe that she has a problem with alcohol, but that she nevertheless does not intend to consume alcohol again because of the greater clarity she experiences without alcohol. *Id.* at 73, 106.

The DOE Psychologist testified last, after observing the testimony of all of the other witnesses. The DOE Psychologist explained that his clinical opinion in the Report was influenced by the Individual’s desire to present herself as excessively virtuous, which the MMPI-2-RF test results had confirmed. *Id.* at 114–15. However, the DOE Psychologist testified that he believed that the Individual had demonstrated greater candor at the hearing than he had perceived during his prior examination. *Id.* at 120.

The DOE Psychologist noted that the Individual had not participated in the dynamic therapy that he had recommended, and evaluated the Individual’s Counselor’s qualifications and therapeutic technique as inadequate to address the narcissistic elements of the Individual’s personality. *Id.* at 120, 125. The DOE Psychologist also noted that the Individual had admitted to not meeting the nine months of abstinence from alcohol that he had recommended and that she had not taken the PEth tests at the frequency that he had recommended, having taken only one since his evaluation. *Id.* at 124.

Based on his perception that the Individual had testified candidly during the hearing and his belief that the Individual was a good woman, who is strong minded, and “virtuous,” the DOE Psychologist reversed his prior opinion that the Individual suffered from a psychological condition characterized by a lack of candor and opined that the Individual could remain abstinent from alcohol in the future. *Id.* at 118, 124. Therefore, the DOE Psychologist concluded that the Individual was rehabilitated, and that she had a low risk of relapse in the future. *Id.* at 124–25.

Under questioning from the Administrative Judge, the DOE Psychologist acknowledged that the Individual was still minimizing the number of drinks she consumed prior to the clinical interview in March. *Tr.* at 136. The DOE Psychologist indicated that at the hearing “maybe [the Individual] minimized” her drinking prior to the first PEth test, but that he otherwise found her testimony trustworthy. *Id.* at 136.

## V. ANALYSIS

### A. Guideline G

The Individual’s multiple arrests for DWI and the evidence that she consumed alcohol habitually to the point of impaired judgement raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (c). An individual may mitigate security concerns under Guideline G if:

- (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.

*Id.* at ¶ 23(a)–(d).

In this case, the Individual has not satisfied any of the mitigating conditions. The Individual does not meet the first mitigating condition because of the frequency and recency of her conduct, and her repeated efforts to hide the extent of her drinking problem. *Id.* at ¶ 23(a). The Individual consumed alcohol habitually to excess from at least 2013 to the date of her DWI in June 2018. She also minimized the amount of alcohol that she was consuming: (1) to the LSO in the PSI after her first arrest for DWI, (2) to an OPM investigator, (3) in her response to the LOI, and (4) to the DOE Psychologist. Moreover, after her arrest for DWI in 2013, the Individual expressed during the PSI and to the OPM investigator that she had learned her lesson and would not drink and drive again, only to be arrested for DWI in 2018. The Individual’s efforts to hide her problematic drinking, and the recency of her latest DWI, despite her prior promises after her 2013 DWI, cause me to conclude

that the Individual's problematic behavior is likely to recur and casts significant doubt on her reliability, trustworthiness, and judgment.

The Individual does not meet the second mitigating condition because she has not acknowledged her maladaptive alcohol use and has not demonstrated a clear and established pattern of modified consumption or abstinence. *Id.* at ¶ 23(b). During the hearing, the Individual testified that she did not believe that she had a problem with alcohol. Furthermore, she admitted to relapsing and consuming alcohol in violation of her probation, most recently within approximately four months of the hearing. For these reasons, I find that the Individual does not meet the second mitigating condition under Guideline G.

I also find that the Individual does not meet the third mitigating condition because I am not convinced that the counseling the Individual is receiving is adequate, and record evidence suggests that the Individual has not made adequate progress. *Id.* at ¶ 23(c). The Individual's Counselor displayed minimal knowledge of the Individual's relevant history with respect to alcohol and appeared unaware of the Individual's relapses following the end of her supervised probation. Moreover, the Individual expressed that she does not believe that she has a problem with alcohol, and the Individual's mother reported that the Individual had told her that she does not believe that she belongs in counseling and is only doing so to save her job. For these reasons, I am not convinced that the Individual's Counselor has an adequate grasp of the Individual's problem with alcohol or that the Individual is participating in counseling in good faith. Since the Individual has not completed counseling, the fourth mitigating condition is also clearly inapplicable. *Id.* at ¶ 23(d).

Finally, I find the opinion of the DOE Psychologist unpersuasive. During the hearing, the Individual maintained that she only consumed three beers prior to the March 2019 PEth test, which the DOE Psychologist acknowledged could not be true. The Individual's testimony that she had never consumed more than two drinks before driving, except on the two occasions when she was arrested and charged with DWI, strains credulity. Moreover, the Individual testified that she tends to misrepresent facts to authority figures to protect herself, lied about her alcohol-related behavior to law enforcement, the LSO, an OPM investigator, and the DOE Psychologist himself, and demonstrated a tendency to present herself as excessively virtuous on the MMPI-2-RF. Against all of this evidence that the Individual cannot be trusted to accurately convey the extent of her drinking, the DOE Psychologist relied heavily on his subjective judgement that the Individual was a "virtuous," "strong-minded woman" and the results of one after-the-fact PEth test that the Individual took to determine that the Individual was rehabilitated from her alcohol problem. Moreover, the DOE Psychologist did not sufficiently explain his opinion that the Individual has a low risk of relapse, particularly in light of the fact that the Individual relapsed in March 2019, the month following her completion of the supervised portion of her probation when she knew she was no longer subject to random alcohol tests. I see no reason to believe that the Individual will refrain from returning to problematic drinking when she is no longer being monitored, particularly in light of her doing so a mere six months prior to the hearing and while on probation.

Having determined that the Individual has not satisfied any of the mitigating conditions, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

## **B. Guideline I**



The Notification Letter cited the DOE Psychologist's opinion that the Individual's lack of candor constituted a personality condition that undermined her trustworthiness; this was the sole basis cited by the Notification Letter with respect to the Guideline I security concern. Ex. 1 at 2. One of the ways that an individual may mitigate such security concerns is through the "recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation." *Id.* at ¶ 29(c).

In this case, the DOE Psychologist testified that, after observing the hearing, he no longer believed that the Individual had a psychological condition that impaired her judgement, stability, reliability, or trustworthiness. Tr. at 132. However, the DOE Psychologist also admitted that, even at the hearing, the Individual continued to underrepresent the amount of alcohol she had used prior to his evaluation. *Id.* at 136. Given this fact, I cannot find that the Individual has resolved the Guideline I security concerns regarding her psychological condition which manifests itself in her inability to be completely truthful.

## **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 Guidelines G and I 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 Notification Letter under Guidelines G and I. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals