



(LSO) received information that the individual had a previously undisclosed arrest, which occurred approximately 35 years earlier, for driving under the influence of alcohol (DUI). *See* Exhibit 5. As a result of this information, the LSO conducted a personnel security interview (PSI) with the individual in September 2016. *See* Exhibit 10. The PSI did not resolve the security concerns arising with respect to the individual's alcohol consumption and, as a result, the LSO referred the individual to a DOE consultant psychologist (DOE psychologist) for an evaluation. *See* Exhibit 4.

The individual is also subject to random alcohol testing at his workplace. In October 2016, approximately two weeks following the PSI but prior to the psychological evaluation, the individual was selected for a random breath alcohol test (BAT), on which he tested positive with an alcohol level in excess of that permitted at his work site. As a result, the individual was suspended from work for 30 days. *See* Exhibit 6.

In November 2016, the individual was evaluated by the DOE psychologist. *See* Exhibit 7. Since neither the PSI nor the psychological evaluation resolved the security concerns arising with respect to the individual's alcohol consumption, the LSO informed the individual in a letter dated January 23, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information raised one or more security concerns under "Guideline G: Alcohol Consumption" of the Adjudicative Guidelines (Guideline G).<sup>2</sup> *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 11 numbered exhibits into the record and presented the testimony of one witness, the DOE psychologist. The individual, represented by counsel, introduced five lettered exhibits (Exhibits A – E) into the record and presented the testimony of three witnesses, including that of himself and his alcohol treatment counselor. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.<sup>3</sup>

## **II. Regulatory Standard**

### **A. Individual's Burden**

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<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.energy.gov/oha](http://www.energy.gov/oha).

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his 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. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Administrative Judge’s Decision**

In personnel security cases arising under Part 710, it is my role 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). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited Guideline G as the basis for suspending the individual’s security clearance. Guideline G relates to security risks arising from 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. *See* Adjudicative Guidelines at Guideline G ¶ 21. With respect to Guideline G, the LSO relied upon the November 2016 written evaluation by the DOE psychologist which concluded that the individual is a user of alcohol habitually to excess and met both the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)*, for Alcohol Use Disorder, Moderate, and the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*, for Alcohol Dependence, in each case without adequate evidence of rehabilitation or reformation. Ex. 1 at 1; Ex. 7 at 13-15. Additionally, the LSO alleged, *inter alia*, that the

individual: (1) acknowledged during the PSI that his alcohol consumption resulted in his experiencing intoxication once a week; (2) tested positive on a BAT administered while he was working at a DOE site; and (3) had been arrested for DUI in 1976, 1980 and 1985. Ex. 1 at 1-2.

In light of the information available to the LSO, the LSO properly invoked Guideline G.

#### **IV. Findings of Fact**

Although the individual testified that he had exaggerated his alcohol consumption during the PSI and the DOE psychological evaluation, his testimony acknowledged the accuracy of much of the information set forth in the Notification Letter. In those instances where the individual contested matters set forth in the Notification Letter, I have carefully considered the totality of the individual's testimony, the entirety of the written record, and the arguments presented by both the individual and the LSO in reaching the findings of fact set forth below.

The individual was arrested for DUI in 1976, 1980 and 1985. Tr. at 15, 48, 51. He was not prosecuted or convicted following any of those arrests. *Id.* at 51.

The individual requires DOE access authorization in conjunction with his employment by a DOE contractor. During a periodic reinvestigation of his eligibility for access authorization, the LSO learned of the individual's DUI in 1980, which the individual had not disclosed. *See* Ex. 5. As a result of this information, the LSO conducted a PSI with the individual in September 2016, focusing on the individual's patterns of alcohol consumption. *See* Ex. 5; Ex. 10.

At the time of the PSI, the individual was typically consuming two 750 ml bottles of wine and two six-packs of 12 ounce beers over the course of the weekend (three days). Ex. 7 at 4. He became intoxicated once a week. Ex. 10 at 33.

Less than two weeks after the LSO conducted the PSI, the individual tested positive (.038) on a random BAT while on duty at a DOE site. Tr. 17, 53. His employer suspended him from work for 30 days and sent him for an alcohol assessment. Ex. 6 at 1. The evaluator diagnosed the individual as meeting the *DSM-5* diagnostic criteria for Alcohol Use Disorder, Mild, and recommended that the individual undertake 12 weekly individual counseling sessions for alcohol abuse and attend two meetings of Alcoholics Anonymous each week for 12 weeks. Ex. A at 2; Ex. B at 1. The individual successfully completed the recommended program at the end of December 2016. Ex. B at 3-4; Tr. at 18-20, 37-39. At the end of the program, his treatment counselor recommended that the individual maintain abstinence from alcohol indefinitely. *Id.* at 91, 140.

Contemporaneously, the LSO referred the individual for an evaluation by a DOE psychologist which was conducted in November 2016. The DOE psychologist diagnosed the individual as meeting both the *DSM-5* diagnostic criteria for Alcohol Use Disorder, Moderate, and the *DSM-IV-TR* diagnostic criteria for Alcohol Dependence, in each case

without adequate evidence of rehabilitation or reformation. Ex. 7 at 14. To evidence such rehabilitation and reformation, the DOE psychologist recommended the individual complete an intensive outpatient substance abuse treatment program and maintain alcohol abstinence for two years. *Id.* at 14-15. At the hearing, the DOE psychologist confirmed that the 12-week program completed by the individual in December 2016 satisfied his recommendation for an intensive outpatient treatment program. Tr. at 182-183. The individual received a written copy of the DOE psychologist's evaluation in January 2017 and, therefore, was aware of his recommendation that the individual maintain abstinence for two years. *Id.* at 55.

In mid-February 2017, the individual had a "celebratory" drink with a family member. He subsequently had two dinners where he consumed wine. *Id.* at 23, 28, 64-65.

In anticipation of the administrative review hearing, the individual returned to counseling with his alcohol treatment counselor in late February. Ex. E at 3. Although he had broken his abstinence with the "celebratory" drink, he reported to his counselor that he had continued his abstinence since their last meeting in December. Ex. E at 3; Tr. at 94. A month later he reported the "celebratory" drink to his counselor without specifying when it had occurred. *Id.* at 143, 146-147. The counselor's recommendation to the individual was that he remain abstinent from alcohol. *Id.* at 41-42, 57-58, 87, 91, 114, 118, 140. The individual did not disclose to the counselor his two dinners with wine prior to the individual's testimony during the administrative review hearing in the counselor's presence. *Id.* at 42, 144.

Immediately prior to the administrative review hearing, the individual's treatment counselor evaluated the individual using a diagnostic test and prepared a written report addressed to DOE for the hearing. *See* Ex. E at 3-5. The treatment counselor concluded that the individual met the *DSM-5* diagnostic criteria for Alcohol Use Disorder, Mild. *Id.* at 2, 5. Although the counselor was aware that the individual had broken his abstinence on at least one occasion, he omitted that information from his written evaluation prepared for the hearing and addressed to DOE. *See* Ex. 5; Tr. at 147-148.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access

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<sup>4</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

authorization should not be restored. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

#### **A. Mitigating Evidence**

In mitigation of the Guideline G security concerns alleged with respect to his alcohol consumption, the individual's primary arguments are that: he has completed a 12-week alcohol treatment program, has recently returned to individual counseling and is attending one meeting of Alcoholics Anonymous each week; his experts have concluded that he has a less severe alcohol disorder than diagnosed by the DOE psychologist; and he has made substantial progress in modifying his pattern of alcohol consumption (which the DOE psychologist acknowledged at the hearing) and has received a favorable prognosis from his treatment counselor.

For these reasons, the individual argues that he has sufficiently mitigated the security concerns noted by the LSO under Guideline G.

#### **B. Administrative Judge Evaluation of Evidence**

As an initial matter, I note that legitimate security concerns exist as a result of the individual's consumption of alcohol. Even if one were to discount the individual's three incidents of DUI due to the age of such occurrences, the individual acknowledges that: (1) he drank to the point of intoxication on a regular basis until late last year; (2) he was suspended from work due to failing a random BAT last October; and (3) his own mental health experts have concluded that he meets the diagnostic criteria set for in the *DSM-5* for an Alcohol Use Disorder. Ex. 10 at 33; Ex. A at 2; Ex. E at 2, 5; Tr. at 17, 53, 59. The individual's alcohol consumption was the focus of a PSI conducted by the LSO last September and yet, while clearly on notice of those concerns, he consumed alcohol to such excess that he failed a random BAT at his worksite less than two weeks after the PSI. Ex. 6. While the individual has attempted to minimize the failed BAT as an aberration, the proximity of the failed BAT to the PSI evidences that the individual had either an inability or unwillingness to control his alcohol consumption. Tr. at 32-33. Any one of these factors is disqualifying for access authorization. *See* Adjudicative Guidelines at Guideline G ¶ 22(b), (c), (d), (e).

In light of the existence of such disqualifying factors, the issue before me is whether the individual has sufficiently mitigated the security concerns arising from his alcohol consumption.

The individual attempted to walk-back from the amount of alcohol consumption that he self-reported during the PSI and the DOE psychological evaluation, but there is little doubt that he consumed a significant amount of alcohol, regularly, prior to his suspension from work following the positive result on the random BAT. Tr. at 21-22, 53, 59. With respect to this period of time, the individual testified during the hearing that he typically become

intoxicated once a week, as he had reported during the PSI. *Id.* at 53. Subsequently, he changed that testimony and testified that he only drank to intoxication once every second or third week during the period preceding the PSI. *Id.* at 59. Based on such inconsistencies in the record, I have concluded that the individual is not a reliable reporter of his historic alcohol consumption. During the hearing, the individual testified that he had over-reported his alcohol use to the DOE psychologist because he was irritated at the repeated questioning by DOE with regard to his alcohol consumption. *Id.* at 21-22, 27. The DOE psychologist noted the individual's "vague and guarded interview style" in the psychologist's written evaluation. Ex. 7 at 14. The individual's irritation, bordering on anger, was also apparent during his testimony at the hearing. For these reasons, I have given minimal evidentiary weight to the individual's testimony that seeks to recast information he provided during the PSI and the DOE psychological evaluation.

All of the mental health experts who have evaluated the individual found that he had a *DSM-5* diagnosable condition. *See* Ex. 7 at 13-15; Ex. A at 2; Ex. 5 at 2, 5. The only difference was with respect to severity. The individual's experts concluded that he has Alcohol Use Disorder, Mild, while the DOE psychologist concluded that he has Alcohol Use Disorder, Moderate. The individual's treatment counselor concluded that the individual has a favorable prognosis. Ex. E at 3. Both the individual's mental health experts and the DOE psychologist affirm that the treatment program completed by the individual conforms to their recommendations. Ex. B at 3, 4; Tr. at 182-183. For this, the individual is to be commended.

The individual's treatment counselor prepared a report addressed to DOE and he testified at the hearing at the request of the individual. *See* Ex. E at 3-5. At the hearing, the treatment counselor testified that he had recommended complete abstinence for the individual, both at the time the individual initially completed his treatment in December 2016 and as of the date of the hearing. Tr. at 41-42, 57-58, 87, 91, 114, 118, 140. The individual returned for additional counseling in February 2017 in anticipation of the hearing. Ex. E at 3. The prior week, the individual had broken his abstinence with a "celebratory" drink with a family member; however, he reported to his counselor that he had maintained his abstinence. *Id.* at 3; Tr. 94. The individual reported the "celebratory" drink to his counselor about a month later. *Id.* at 143, 146-147. The individual acknowledged at the hearing that he had subsequently had two dinners that included drinking wine; these had not been reported to his treatment counselor and the counselor learned of them for the first time during the individual's testimony at the hearing. *Id.* at 42, 144. For these reasons, I have concerns about the individual's candor with his counselor.

Additionally, the counselor's report addressed to DOE describes that, upon the individual's return to counseling in February, the individual reported his continued abstinence since completing his treatment program the prior December. Ex. E at 3. At the time that the counselor prepared his report, he was aware that the individual had broken his abstinence with the "celebratory" drink; however, that relapse was not disclosed in the report. At the hearing, the counselor had no explanation for his decision to exclude that information from the report prepared for the hearing. Tr. at 147-148. In light of this omission from the counselor's written report addressed to DOE, I have concerns about the treatment

counselor's candor with the DOE. At the hearing, the counselor learned of the two additional relapses by the individual, all within two months of the hearing, and testified that he viewed them as not significant. *Id.* at 144. I cannot reconcile this conclusion in light of the counselor's on-going recommendation that the individual abstain from alcohol consumption. For these reasons, as well as the individual's lack of candor with the counselor discussed in the preceding paragraph, I have accorded limited evidentiary weight to the conclusions of the individual's treatment counselor with respect to the efficacy of the individual's treatment and his prognosis.

At the hearing, the individual was unable to consistently articulate his goal with respect to future alcohol consumption, once testifying that his present intent was stay as "abstinent as possible" (*Id.* at 64) and, at another time, testifying that abstinence was best "but every once in a while I may have a glass of wine at dinner ... and that's where I'm going to leave it" (*Id.* at 44).

In the two months preceding the hearing, the individual consumed alcohol on three occasions, all at a time that he was aware that both his treatment counselor and the DOE psychologist had recommended that he maintain abstinence from alcohol. While both his counselor and the DOE psychologist agreed that on these occasions the individual consumed significantly less alcohol than he had routinely consumed prior to his treatment,<sup>5</sup> these occasions still represent three instances of the individual failing to comply with treatment recommendations and represent relapses. *Id.* at 105, 145-146. These all occurred following the individual's completion of his treatment program in December 2016 and during the two-month period preceding the hearing. Therefore, I cannot conclude that the individual is making satisfactory progress with respect to his treatment of Alcohol Use Disorder. *Cf.* Adjudicative Guidelines at Guideline G ¶ 22(c).

For the reasons set forth above, I find that the individual has not resolved the security concerns associated with Guideline G arising with respect to his alcohol consumption.

## **V. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline G. 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 have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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<sup>5</sup> These conclusions assume the accuracy of the individual's self-reports with respect to his alcohol consumption. Based on my observations of the individual and his testimony, I question the appropriateness of those assumptions.



Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: June 6, 2017