

of the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (the Guidelines).

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual presented the testimony of two witnesses and testified on his own behalf. The DOE Counsel presented the testimony of its psychiatrist. The DOE submitted five exhibits (Ex. 1-5) into the record, and the individual tendered two exhibits (Ex. A-B).²

II. Regulatory Standard

a. Individual's Burden

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 (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 his 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 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.

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.*

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's ability to obtain access authorization. The information in the letter specifically cites Guideline G, which 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* Guideline G at ¶ 21.

In citing Guideline G, the LSO stated that it was relying upon the February 2017 written evaluation by the DOE psychiatrist, which concluded that the individual is a habitual consumer of alcohol. Additionally, the LSO alleged that the individual admitted during the November 2016 Personnel Security Interview (PSI) that: (1) during the period 2009 to 2016, he became intoxicated three to four times a week after consuming four ounces of alcohol, (2) during the period 1981 to 1985, he consumed eight ounces of alcohol three to four times per week, and (3) during the period 1985 to 1995, he consumed eight ounces of alcohol daily. The LSO noted that the individual stated during the PSI that he became intoxicated every time he consumed four ounces or more of alcohol.

IV. Findings of Fact

There was no precipitating event that led to these administrative proceedings. Hearing Transcript (Tr.) at 46. Instead, in this particular case, the individual self-reported his alcohol use. *Id.* During the PSI, the individual stated that he began drinking at age nineteen, and he described his drinking at the time to be "too much and too often," consuming approximately eight ounces of alcohol per night. Ex. 5 at 31-32, 36. The individual reported that he became intoxicated nearly every time he drank. *Id.* at 36. This continued until around 1995, when the individual decided to abstain from alcohol. *Id.* at 37. His abstinence lasted approximately twelve years, until he began dating a woman who consumes alcohol.³ *Id.* at 42-43; Tr. at 68. At that point, in 2008, the individual was drinking about four to six ounces of alcohol, three to four times per week. Ex. 5 at 42-43. The individual stated that at the time of the PSI, he felt intoxicated anytime he drank four ounces per night, which was every night, and on occasion, his drinking could be as high as eight ounces per night on weekends. *Id.* at 46. The individual clarified that he only drank at his home. *Id.* at 47.

Following the PSI, the individual was referred to the DOE consultant-psychiatrist for evaluation. The psychiatrist found that the individual is a habitual consumer of alcohol, drinking at least five to seven days per week since 2009. Ex. 4 at 12. The psychiatrist noted that the individual drinks to intoxication every time he drinks, and that he consumes approximately 1.75 liters of alcohol every one and a half weeks. *Id.* Furthermore, the psychiatrist described the individual's pattern of alcohol consumption as "binge drinking." *Id.* The psychiatrist reported that the individual 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 Abuse, in each case without adequate evidence of rehabilitation or reformation. *Id.* The psychiatrist advised that in order to

³ The individual's recollection of when he was abstinent is inconsistent in the various exhibits. It appears that he was abstinent for somewhere between 12 and 14 years. Tr. at 68; Ex. 5 at 42; Ex. 3 at 1.

show adequate evidence of rehabilitation or reform, the individual would need to abstain from alcohol for six months, participate in Alcoholics Anonymous for six months, and successfully complete an intensive outpatient substance abuse program. *Id.* Since receiving the psychiatrist's report, the individual has not abstained from alcohol, nor has he participated in any substance abuse program or therapy.

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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should not be granted. I cannot find that granting 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.

At the hearing, in testifying on his own behalf, the individual stated that he is a "tightly wound[,]. . . closed-off person[.]" and alcohol helps him relax and lowers his inhibitions. Tr. at 63. He clarified that he only drinks at home with his girlfriend, and he does not socialize or go out. *Id.* at 50. He stated that, on weekends, he typically consumes four drinks, containing two ounces of alcohol each, over a period of six hours. *Id.* at 61-62. He stated that he never drinks before 5:00 p.m., and if he goes to bed earlier, he has less to drink. *Id.* The individual stated that, on a night preceding a day he must report to work, he will consume no more than two drinks, each containing two ounces of alcohol. *Id.* at 57, 59. He clarified that this only occurs approximately one or two times per week, and he is always in bed by 9:00 p.m. *Id.* at 57, 60.

The individual testified that he has not been abstinent since receiving the DOE consultant-psychiatrist's report. *Id.* at 44. The individual stated that he did not disagree with the diagnosis, and while he has reduced the amount he consumes, he stated that he knows the reduction in his consumption is insufficient to change the diagnosis. *Id.* at 53, 108, 119. The individual clarified that in answering questions during this administrative process, he considered intoxication to be "the very first feeling of relaxation." *Id.* at 92. However, he stated that if the definition of intoxication includes behavior such as slurring words, he could not recall the last time he was intoxicated. *Id.* at 93.

The individual stated that he is not concerned about his drinking and that he maintains communication with his physician regarding healthy amounts of alcohol consumption. *Id.* at 46. He stated that he does not want to abstain from alcohol because it is something he enjoys, and he feels he should be able to set his own limits and exercise free will. *Id.* at 67. The individual explained that in the past, he abstained from alcohol for twelve years, and prior to his appointment with the DOE psychiatrist, he stopped drinking for ten days without any problems. *Id.* at 68-69. He stated that he feels that he could stop drinking, as he is not physically dependent, but he does not want to. *Id.* at 70-71. While the individual acknowledged that he drinks more than the medical or legal community would consider appropriate or acceptable, he felt that his above-average consumption did not make him a risk to national security. *Id.* at 87. Finally, the individual

highlighted that in the last twenty-three years, there has been no indication of any alcohol-related problems in his life, and there is nothing in his record that shows any irresponsibility. *Id.* at 74.

To support his claims that his alcohol use does not affect his life, the individual called two witnesses: his coworker, and his partner and girlfriend of ten years. *Id.* at 12, 19. The coworker testified that he had never seen the individual's alcohol use as a problem, has never seen him use alcohol at work or at lunch, and has never seen him hungover. *Id.* at 15, 16, 17-18. His partner testified that she and the individual have been together for ten years, living together for nine, and she has never worried about the individual's alcohol consumption. *Id.* at 19-20, 38. She confirmed his description of his drinking habits, and she stated that when he drinks, he does not behave erratically, go to bars, drink and drive, or become mean, rowdy, harmful, or inappropriate. *Id.* at 20, 25, 26. Instead, she stated that the individual just laughs and becomes more talkative with regard to social or scientific topics. *Id.* at 26-27. She clarified that he does not discuss work. *Id.* Finally, she stated that she has never felt that he displayed poor judgment as the result of his alcohol consumption. *Id.* at 31.

The final witness, the DOE consultant-psychiatrist, sat through the entire hearing, listening to the testimony of all the witnesses. *Id.* at 94. The psychiatrist stated that his opinion had not changed since he wrote the evaluation, and the individual's pattern and amount of alcohol consumption had not changed. *Id.* at 98. The psychiatrist noted that while the individual claims to be making an effort to drink less, the quantity of his consumption remains the same as when the evaluation was performed. *Id.* at 82, 98. He stated that he would still classify the individual as a habitual consumer who, at times, engages in binge drinking. *Id.* at 98.

Considering these facts, I conclude that the security concerns raised under Guideline G have not been sufficiently mitigated. With regard to alcohol use during the period 1981 to 1995 cited in the Notification Letter, I conclude that this drinking pattern, which occurred over twenty years ago, does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. *See* Guideline G at ¶ 23(a). However, with regard to the individual's current alcohol consumption, I conclude that the security concerns have not been mitigated. While the individual argued that there have been no indications that his alcohol consumption negatively affects his life or his judgment and reliability, as stated previously, the burden is on the individual to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the nation interest." 10 C.F.R. § 710.27(d). The individual has been diagnosed by a duly qualified psychiatrist with Alcohol Abuse, and stated that he agrees with the diagnosis, although he does not acknowledge that he abuses alcohol. Furthermore, he has not demonstrated that he has participated in counseling or treatment, nor has he shown that he has taken any other actions to overcome his abuse of alcohol. *See* Guideline G at ¶¶ 22(d), 23(b)-(c). The DOE consultant-psychiatrist indicated that his opinion has not changed since issuing the report, and the report stated that the individual had not shown adequate evidence of reform and rehabilitation. *See id.* at ¶ 22(d). Not only do I defer to the DOE consultant-psychiatrist in this case, but I further conclude that his opinion is consistent with the witness testimony and my observations in this case.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline G. 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 associated with that Guideline. I therefore cannot find that granting 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). Accordingly, I have determined that the DOE should not grant the individual's access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

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

Date: July 10, 2017