

evaluation, he received a hand-written note from the individual, indicating that the individual had been dishonest during the clinical interview with respect to the amount of alcohol that he consumed. *See* Exhibit 6. Following receipt of this information, the LSO conducted a second PSI with the individual, in February 2017, with respect to the individual's alcohol-related disclosures during both the psychiatric evaluation and the earlier PSI. *See* Exhibit 8.

On July 19, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. *See* Exhibit 1. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline E (personal conduct) and Guideline G (alcohol consumption) of the Adjudicative Guidelines. *See* Exhibit 2.

Upon 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. I subsequently conducted an administrative hearing in the matter. At the hearing, the individual testified on his own behalf and tendered one lettered exhibit (Exhibit A). The LSO presented the testimony of a Personnel Security Specialist and the DOE psychiatrist, and submitted sixteen numbered exhibits (Exhibits 1-16) into the record. The exhibits will be cited in the 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.²

II. Regulatory Standard

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 regulations require 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 him 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.

² OHA decisions are available on the OHA website at www.energy.gov.

III. Notification Letter and Associated Security Concerns

As previously noted, the LSO cited Guidelines E and G as the bases for denying the individual's security clearance.

Guideline E relates to "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations." Guideline E at ¶ 15. Such conduct "can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information." *Id.* Of special interest is any failure to provide truthful and candid answers during the access authorization process. *Id.* With respect to Guideline E, the LSO cited: (1) the individual's letter to the DOE psychiatrist acknowledging the individual's inaccurate reporting of his alcohol consumption during the psychiatric evaluation; (2) the individual admitting, during the 2017 PSI, that he had been dishonest with regard to his alcohol consumption during the psychiatric evaluation and during the 2016 PSI; and (3) the individual admitting, during the 2017 PSI, that he believed that an honest reporting of his alcohol use would have affected his eligibility to obtain a security clearance. *See* Ex. 2 at 1-2.

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* Guideline G at ¶ 21. With respect to Guideline G, the LSO relied upon the written assessment of the DOE psychiatrist, in which the DOE psychiatrist diagnosed the individual as meeting the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM-IV-TR)* for Alcohol Abuse. Additionally, the LSO cited in the Notification Letter that the individual had been charged with DWI in 1994, 2004 and 2008.

In light of the information available to the LSO, the LSO properly invoked Guidelines E and G.

IV. Findings of Fact

At the hearing, the individual acknowledged the factual accuracy of the matters that the LSO alleged in the Notification Letter. Tr. at 50-52. I have carefully considered the totality of the record, including the individual's acknowledgements, in reaching the findings of fact set forth below.

The individual was charged with DWI on three separate occasions – in 1994, 2004, and 2008. *Id.* at 50. Following his 2008 arrest, he completed a court-ordered 18-month treatment program and, during that time, abstained from consuming alcohol. *Id.* at 41-42, 52. The individual acknowledged in the second PSI and at the hearing that he resumed consumption of alcohol around 2011 to 2012 and, since that time, has consistently consumed three to four alcohol drinks on four to five occasions per week. *Id.* at 42-43. (The DOE psychiatrist believes the amount of alcohol consumed by the individual may be as high as 120 drinks per month. *Id.* at 92.) Generally, the individual consumes alcohol at home, in the evenings, while doing chores on his farm. *Id.* at 53-54.

During the initial PSI (February 2016), the individual stated that he has an occasional beer when he goes out to dinner, perhaps once a month. Ex. 13 at 2. The individual has since acknowledged that this was a false statement. Tr. at 51.

During the clinical interview with the DOE psychiatrist (November 2016), the individual stated that his typical alcohol consumption was approximately one drink per week. Ex. 5 at 7. The individual has since acknowledged that this was a false statement. Ex. 6; Tr. at 51.

In the DOE psychiatrist's written report following the psychiatric evaluation, he diagnosed the individual as meeting the *DSM-IV-TR* criteria for Alcohol Abuse in Early Partial Remission, without evidence of adequate rehabilitation or reformation. He recommended that the individual abstain from alcohol consumption for a minimum of 12 months and complete an intensive outpatient substance abuse treatment program. Ex. 5 at 9-10.

As part of the psychiatric assessment, the DOE psychiatrist ordered a phosphatidylethanol (PEth) test, which he described as "a very sensitive and specific test to detect chronic heavy drinkers, with a window of detection of 28 days." *Id.* at 8. Approximately three weeks after the psychiatric assessment, the DOE psychiatrist received a handwritten note from the individual which stated, "I never realized what the blood test was for ... until I talked to my wife. So I just wanted to let you know that I guess I was not honest about my drinking, but you have the test results...." Ex. 6.

Approximately two weeks prior to the hearing, the LSO requested the DOE psychiatrist to update his evaluation of the individual and to incorporate in that update the handwritten letter the psychiatrist had received from the individual following the initial assessment and the transcript from the second PSI (2017). *See* Ex. 15. The psychiatrist did not contact the individual as part of the updated assessment. In his written update, the psychiatrist concluded that the individual appeared to have met the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)* for Alcohol Use Disorder, Moderate, for the period from November 2004 to 2008, and, since 2011, the individual's alcohol consumption had been habitual and excessive. Ex. 15 at 4. At the hearing, the DOE psychiatrist clarified that he concluded, in retrospect, that the individual lacks the functional impairments necessary for an alcohol diagnosis (other than from 2004 to 2008) and that the individual has no current *DSM* diagnosable disorder. Tr. at 86-87.

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 at this time. 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.

In mitigation of the security concerns, the individual noted that he promptly informed the DOE psychiatrist that he had not been honest during the clinical interview about the amount of alcohol that he consumed. Tr. at 48. He also asserted that he was not vulnerable to coercion or exploitation as the result of his DWI charges. *Id.* at 49. Finally, the individual stated that his “work record speaks for itself,” explaining that he arrives to work on time and has worked for his employer for “four-and-a-half years and [has] never had an issue with anybody.” *Id.* at 50. I understood his argument to be that his alcohol consumption occurred away from his employment and did not interfere with his work performance in any way.

A. Guideline E

Both holders of and applicants for DOE access authorization are expected to be candid and honest under all circumstances in their dealings with the agency, especially with respect to information that might be personally detrimental. Self-disclosure is critical to the protection of national security, as security officials can only assess and address security risks if they receive timely and accurate information. For this reason, Guideline E emphasizes as a “special interest . . . any failure to cooperate or provide truthful and candid answers during national security or adjudicative processes.” Guideline E at ¶ 15.

In this case, the individual knowingly provided false information during both the 2016 PSI and the psychiatric evaluation about the amount of alcohol he consumes. He knew both the PSI and the psychiatric evaluation were part of the security clearance process and acknowledged that he falsified the amount of alcohol he consumed because he was concerned that an honest response would be detrimental to his receiving access authorization. Tr. at 45, 46. This type of behavior causes grave concern under Guideline E. Additionally, the individual made no effort to correct his statements until he realized that the PEth test would likely reveal his falsifications. *Contra*, Guideline E at ¶ 17(a).

For these reasons, I conclude that the individual has failed to resolve the security concerns arising under Guideline E.

B. Guideline G

In his initial assessment, the DOE psychiatrist concluded that the individual met the *DSM-IV-TR* criteria for Alcohol Abuse in Early Partial Remission. Ex. 5 at 9. Although I found his written report unclear on aspects of his analysis, I have not focused on those matters as that diagnosis appears superseded by his updated evaluation and his testimony at the hearing. At the hearing, the DOE psychiatrist testified that he is unable to conclude that the individual has any clinically significant impairment or distress resulting from his alcohol consumption and, therefore, the individual does not currently qualify for a *DSM* diagnosis. Tr. at 73-76, 86-89. The psychologist does believe that (1) the individual qualified for an Alcohol Abuse diagnosis under the *DSM-5* during the period of 2004-2008 and (2) since the individual resumed alcohol consumption in 2011 following his court-ordered treatment, the individual has consumed alcohol excessively and habitually. Ex. 15 at 3. The psychiatrist’s *DSM-5* analysis is difficult to follow as he cites to the *DSM-5* diagnostic criteria using a numbering system that does not align with that used in the *DSM-5* itself and his factual supports for the diagnostic criteria cited appear vague. While I questioned

him on these matters at the hearing, my concerns remain unresolved and the DOE psychiatrist appeared to acknowledge some of those concerns. Tr. at 79-92.

Notwithstanding the foregoing, the individual testified at the hearing that he continues to consume three to four drinks on four to five occasions per week. *Id.* at 54. He believes that he has built up a high tolerance for alcohol, but he acknowledges his typical drinking likely results in his being legally intoxicated on those occasions. *Id.* at 56, 59. While he feels he is “impaired” in some ways by his typical alcohol consumption, he states that it does not interfere with his ability to complete evening chores. *Id.* at 57.

While the individual argues that his drinking has not interfered with his ability to accomplish his work, whether on the job or on his farm, a holder of access authorization is held to higher standards than an ordinary citizen. Security can be breached whether lapses occur on the job or at home. Consuming alcohol to the point of impairment and/or legal intoxication four to five times a week creates a valid security concern. *See* Guideline G at ¶ 22(c). As of the date of the hearing, the individual’s alcohol consumption has continued unabated and without moderation. The individual evidences no understanding of the need to alter his alcohol consumption.

For these reasons, I conclude that the individual has failed to resolve the security concerns arising under Guideline G.

VI. 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 Guidelines E and 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 Guidelines E and G. Accordingly, I have determined that the individual’s access authorization should be not granted at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals