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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: September 7, 2017) **Case No.: PSH-17-0063**
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Issued: January 16, 2018

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.²

I. BACKGROUND

On January 28, 2017, police arrested the Individual for Driving Under the Influence (DUI), Careless Driving, and Leaving the Scene of an Accident, raising concerns regarding the Individual’s eligibility to hold a security clearance. In order to address those concerns, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on April 6, 2017, and had the Individual evaluated by a DOE psychologist (the Psychologist). Because the PSI and the psychological examination did not resolve the security concerns raised by the Individual’s DUI arrest, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on September 8, 2017. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his probation officer, his supervisor, his current

¹ Under the regulations, “access authorization” means 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). Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

therapist (the Current Therapist), his former therapist, his former counselor, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-17-0063 (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15 (hereinafter cited as “Ex.”). The Individual submitted 13 exhibits, marked as Exhibits A through M.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines G and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). The LSO alleges, under Guideline G, that the Individual has habitually used alcohol to excess based upon his reported alcohol use history, his admission that he has an alcohol problem, and his January 28, 2017, and November 1, 2014, DUI arrests.³ The Individual’s reported alcohol history, admission of an alcohol problem, and DUIs adequately justify the LSO’s invocation of Guideline G and raise significant security concerns. The Adjudicative Guidelines state: “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.” Guideline G at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder.” Guideline G at ¶ 22 (a).

The LSO alleges, under Guideline J, that the Individual has engaged in criminal activity based upon his January 28, 2017, and November 1, 2014, DUI arrests. These DUI arrests adequately justify the LSO’s invocation of Guideline J and raise significant security concerns. The Adjudicative Guidelines state: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are: “evidence . . . of criminal conduct.” Guideline J at ¶ 31(b).

III. REGULATORY STANDARDS

The Administrative Judge’s role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that:

The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the

³ The Notification Letter states that the first arrest occurred on October 31, 2014, but the arrest records indicate that this arrest occurred on November 1, 2014. Ex. 12 at 3, 5-7.

national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.

10 C.F.R. §§ 710.7(a). In rendering this opinion, I have considered the following factors:

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 of the individual at the time of the conduct; the voluntariness of 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.

See 10 C.F.R. § 710.7(c). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On November 1, 2014, police arrested the Individual and charged him with DUI and driving the wrong way on a divided highway. Ex. 12 at 3-7. This arrest occurred after the Individual had consumed the equivalent of at least five alcoholic beverages. Ex. 15 at 16. As a result of this arrest, the Individual's DOE security clearance was suspended, and he was referred to his employer's Employee Assistance Program (EAP), where he began receiving counseling services from the Former EAP Counselor.

The LSO conducted a PSI of the Individual on November 12, 2014, during which the Individual provided the LSO with his assurance that he had no future intentions of drinking to the point of intoxication again. Ex. 15 at 45. That PSI did not resolve the security concerns arising from the November 1, 2014, DUI arrest, and the LSO requested that the Individual be evaluated by the Psychologist, who examined the Individual and issued a report on January 15, 2016. In the report, the Psychologist opined that the Individual did not have any alcohol or mental disorder which affected his judgment or reliability. Ex. 6 at 1, 6. The Individual's DOE security clearance was subsequently restored.

On January 28, 2017, the Individual was again arrested and charged with DUI. Ex. 10 at 1-5. This arrest occurred after the Individual had consumed the equivalent of at least five alcoholic beverages. Ex. 14 at 12-13. The Individual admits that he was intoxicated at the time of this incident. Ex. 14 at 10, 16.

Because of the security concerns raised by the Individual's January 28, 2017, and November 1, 2014, DUI arrests, the LSO conducted a PSI of the Individual on April 6, 2017. Ex. 14 at 1. During this PSI, the Individual described the events leading up to his January 28, 2017, DUI arrest. He noted that, at the time of this arrest, he was in the midst of substantial stress induced by "family issues" including his grandmother's cancer diagnosis and his grandfather's Alzheimer's disease. Ex. 14 at 14-15. The Individual admitted that he was using alcohol to cope with that stress. Ex. 14 at 16, 23-24. The Individual reported that, after his first DUI arrest in 2014, he abstained from

alcohol use for about a year and a half.⁴ Ex. 14 at 25. The Individual further reported, that at the time of the winter holidays in 2015, he began to use alcohol again, intending to use it in moderation, which he described as one to three drinks. Ex. 14 at 26-29. He claimed that this pattern continued until his January 28, 2017, arrest. Ex. 14 at 29. The Individual admitted that he had driven with “a buzz” between his two DUI arrests. Ex. 14 at 31-32. The Individual acknowledged that he has an alcohol problem, and recognized that he is better off abstaining from alcohol use. Ex. 14 at 40, 43. The Individual stated that he intended to permanently abstain from alcohol use in the future, and that he had not consumed alcohol since the January 28, 2017, DUI. Ex. 14 at 31, 43-44, 67. The Individual reported that he was attending an Intensive Outpatient Program (IOP), although he had not been diagnosed with an alcohol-related condition. Ex. 14 at 39, 44, 53. The Individual stated he had been attending Alcoholics Anonymous (AA) meetings once a week. Ex. 14 at 46. The Individual reported that his clearance had been suspended and that he had been required to meet with counselors from his EAP and undergo regular alcohol and drug tests. Ex. 14 at 25-28.

Because the PSI did not resolve the security concerns raised by the Individual’s two DUI arrests, the LSO requested that the Individual be evaluated by the Psychologist, who examined the Individual on May 18, 2017, administered a standardized psychological screening test to him (the MMPI-2 RF), and contacted four of the Individual’s mental health providers in order to obtain information.⁵ Ex. 4 at 2. The Psychologist also had the Individual tested for medical indications of excessive alcohol use. The results of this testing did not indicate that the Individual had been abusing alcohol recently. Ex. 4 at 2, 7. On May 23, 2017, the Psychologist issued a report in which he opined that the Individual has developed an alcohol tolerance, and that it is unlikely that the Individual could have developed such a tolerance from consuming only one to three drinks at a sitting twice a month (as he reported in the PSI). Ex. 4 at 7-8. The Psychologist noted that the Individual’s two DUI arrests, use of alcohol to relieve stress, tolerance to alcohol, and ability to consume sufficient quantities of alcohol to raise his blood alcohol level to .10 and .21 on at least two occasions, suggested that he has an alcohol problem. Ex. 4 at 4, 6, 8. While noting that the record before him did not support a diagnosis under either DSM-IV or DSM-5, the Psychologist opined that the Individual “appears to frequently drink to a significant level of intoxication . . . to an extent that impairs his judgement, reliability, and trustworthiness.” Ex. 4 at 8. The Psychologist further noted that the Individual has exhibited “difficulty being candid.” Ex. 4 at 9. In summary, the Psychologist’s report states: “His repeatedly driving while intoxicated, his driving on the wrong side of an Interstate, his repeatedly risking a job that he strongly desires, and his difficulty being candid all are instances reflective of impairment in his judgment, reliability and trustworthiness.” Ex. 4 at 10.

While the Psychologist was of the opinion that “with the appropriate therapy, [the Individual] will likely become able to overcome these difficulties,” he further opined that the individual is not yet reformed or rehabilitated. Ex. 4 at 9. Noting that the clinical supervisor of the Individual’s IOP recommended that the Individual continue in counseling for a year to focus on life and coping skills, the Psychologist opined:

⁴ Later in this PSI, the Individual stated he resumed using alcohol around Thanksgiving of 2015, about 13 months later. Ex. 14 at 27. The Psychologist’s Report indicates that, on February 8, 2017, the Individual had informed his Occupational Medicine Case Manager that this period of abstinence had lasted only four months. Ex. 4 at 6.

⁵ The report indicates that the Psychologist had previously evaluated the Individual on behalf of the LSO. Ex. 4 at 2-3.

It is also my opinion that his dearth of relationship skills and limited ability in coping with stress must be improved if his drinking is to be controlled. I recommend at least six more months (from the date of his evaluation) of such therapy. He will be ready to stop when both he and his therapist believe that he has demonstrated better coping skills and he has shown the ability to have successful relationship engagements. I also recommend that he become active in a 12-step, AA-like program. By active, I intend that he participate in at least three sessions a week, obtain a sponsor and show evidence of working the steps. His participation in such a program should be documented for at least six months from the date of this evaluation. Finally [the Individual] should hold to his stated commitment of never drinking again.

Ex. 4 at 9.

On August 23, 2017, the Individual submitted his Request for a Hearing in which he responded at length to the Notification Letter. The Individual also submitted documentation of his efforts to address his alcohol problem, including attendance sheets showing that he has attended at total of 11 AA meetings between January 22, 2017, and May 24, 2017, a series of lab test results showing that he tested negative for indicators of alcohol abuse between January 26, 2017, and November 27, 2017, and a Certificate of Completion of his IOP dated June 5, 2017. Ex. D; Ex. E at 3; Ex. F. The Individual has also submitted a letter from his IOP therapist (the IOP Therapist), which stated, in pertinent part:

After he completed his program I continued to see him for individual sessions once a week for a month at the recommendation of the program director as a step down protocol. [His] attendance in the program was consistent and I found him to be cooperative and willing to accept his role in the situation he found himself in. Our work together consisted primarily of building coping skills for grief and stress, and grief counseling following the death of his grandmother and then his grandfather. At the time of his discharge I was optimistic about his recovery.

Ex. E at 1. A letter from the IOP's Executive Director states: [The Individual] is very honest in our program and is very concerned about his drinking problem. He enjoys attending our IOP and he does so with an excellent attitude. I do think he is a good candidate to abstain from alcohol all together [sic]. He is very strong in his recovery at this time." Ex. E at 2. The IOP's Treatment Plan for the Individual indicated that he had been diagnosed with "Adjustment Disorder, With Depressed Mood." Ex. E at 26. In a Progress Note dated March 21, 2017, the IOP's Executive Director notes that the Individual is "such a delight to know and work with . . . he is kind, gentle and very positive! Very motivated in recovery." Ex. E at 84.

The Individual submitted a note from his current therapist (the Current Therapist), in which she states:

I have been seeing [the Individual] since September 19, 2017 and we have met six times. [The Individual] consistently shows up for sessions and is always on time. [He] has discussed the impact of his DUI in our sessions together. He does illustrate

that he has learned from his IOP as demonstrated by his ability to articulate the impact of alcohol and the importance of understanding his triggers around alcohol. [The Individual] has struggled with depression and anxiety in the past and his recent DUI has likely exacerbated his symptoms. [He] is taking steps to deal with his depression and anxiety by attending therapy. *I believe he needs continued therapy to gauge his symptoms and to resolve and sustain any improvement around all of these issues.*

Ex. G at 1 (emphasis added).

The Individual also submitted a note dated November 15, 2017, prepared by his present EAP counselor (the Present EAP Counselor). The Present EAP Counselor stated that the Individual “reported learning a great deal about grief and his misuse of alcohol as a way of coping.” Ex. M at 1. The Present EAP Counselor noted that “the death of his grandparents and the family issues that he had to deal with and the way he dealt with it along with what he learned from his treatment has helped [the Individual] grow and mature.” However, the Present EAP Counselor reports that the Current Therapist is “using a nondirective insight therapy approach, which in my opinion doesn't work for what [the Individual] needed to get out of therapy,” resulting in the Individual feeling that he had failed to connect with the Current Therapist and experiencing frustration. Ex. M at 1. The Present EAP Counselor reported that the Individual tried AA but did not find it helpful. Ex. M at 1. In conclusion, the Present EAP Counselor stated: “I have no concerns about his ability to work in a safe and secure manner now and in the future.”⁶ Ex. M at 1.

The Current Therapist testified on the Individual’s behalf at the hearing. She testified that she has been treating the Individual for about three months, and has met with him on seven occasions. Tr. at 16, 32. She testified that she had reviewed the Psychologist’s Report and characterized it as “pretty accurate.” Tr. at 16-17. The Current Therapist emphasized that she is not a drug and alcohol counselor and testified that the focus of her treatment has not been on the Individual’s alcohol issues, but rather on the underlying issues that were “driving the alcohol issue.” Tr. at 17, 25, 29-30. The Current Therapist testified that depression and anxiety were still prominent in the Individual’s life. Tr. at 26, 28. She testified that the Individual realizes the importance of his

⁶ The Individual also submitted a Report by a psychiatrist (the Psychiatrist) dated November 16, 2017. The Psychiatrist reported that he had only met with the Individual on one occasion, on November 11, 2017. Ex. H at 1. The Psychiatrist reported that the Individual:

. . . tells me that he does not drink alone. In fact, he does not hold his drink very well and cannot drink large volumes. He tends to drink only in public, and this has created trouble for him with judgment, when he has tried to drive home while under the influence of alcohol.

. . . After his latest incident he has breathalyzers two to three times a week and ETG tests which have all been negative. He has not had anything to drink since his recent DUI. At this point he no longer wants to drink anymore because of the legal issues that he has had.

He has managed to quit drinking without going to AA. He has not attended meetings since he is extremely shy and finds it difficult to be intimate in a group setting of that sort. He has attempted to take medications to help him with the shyness including trials of SSRIs as well as Wellbutrin. These medications were not successful and had significant side effects.

Ex. H at 1-2.

emotions and is becoming more in touch with them in order to better regulate his moods and avoid self-medicating. Tr. at 17-18. The Individual has “a pretty good understanding of alcohol and how it impacts him.”⁷ Tr. at 18. However, the Current Therapist further opined: “I think he still needs more life skills, more treatment around depression and anxiety, you know, continued -- I think just more continued exploration on ways that he can socialize and, you know, decrease his anxiety.” Tr. at 18. She repeatedly testified that she did not know what the Individual’s prognosis for remaining sober was. Tr. at 18, 21, 23. She further testified that “if he could . . . master some skills and deal with his depression and anxiety . . . there would be . . . a good chance of him no longer self-medicating.” Tr. at 20. She testified that the stress of the present hearing has interfered with his therapy, since much of her work with him has been directed at helping cope with the emotions raised by the hearing process, rather than working on his anxiety and depression. Tr. at 20-21, 32. When the DOE Counsel asked the Current Therapist whether the Individual has “mastered his drinking problem”, she responded by stating: “I don’t have any evidence that he has not,” however, she further characterized the Individual’s progress as “minimal,” noting that he is still in the early stages of addressing his depression and anxiety. Tr. at 21-22, 32. She testified that she has no reason to believe that the Individual had not been honest and forthright with her and other people. Tr. at 33-34. The Current Therapist testified that she would like to see the Individual comply with her suggestion to attend AA meetings. Tr. at 24.

The Individual’s former EAP Counselor (the Former EAP Counselor) also testified on his behalf at the hearing. The Former EAP Counselor testified that she was surprised by the Individual’s second DUI, because “he was doing a good job, he was on a good path, and he was abstaining from alcohol, and from [her] perspective, he had learned quite a lesson.” Tr. at 65, 71. She testified that the Individual is a “good person,” with “good values and good goals.” Tr. at 65. The Former EAP Counselor believes that the Individual is abstaining from alcohol use. Tr. at 70, 77. When asked about the Individual’s future prognosis she testified that she felt confident about the Individual’s ability to remain sober, even though she was surprised by his second DUI. Tr. at 71. The Former EAP Counselor testified that she had read the letter prepared for this hearing by the Current EAP Counselor (which appears in the record as Ex. M) and agrees with it. Tr. at 76. The Former EAP Counselor opined that the Individual’s prognosis is “good.” Tr. at 78.

The Individual testified on his own behalf at the Hearing. The Individual testified that he does not disagree with the Psychologist’s Report. Tr. at 99. The Individual testified that he was embarrassed to see the Psychologist for the second time. Tr. at 100. He testified that he attended the IOP program for 36 sessions, a total of three sessions per week, which consisted of one individual session and two group sessions per week. Tr. at 89. He testified that, through the IOP, he learned that “it’s never a good thing to resort to alcohol, especially when you’re not mindful of the feelings that one is going through,” and that he needs to be more aware of his feelings. Tr. at 91, 94. The Individual explained the severe emotional impact that his grandparent’s terminal illnesses and deaths had upon him and that the familial strife surrounding their illnesses and deaths greatly worsened the pain that he was experiencing from their loss. Tr. at 93-95. The Individual testified that he had established a productive therapeutic relationship with the IOP Therapist. Tr. at 95-96. The Individual testified that he plans to avoid using alcohol in the future because he does not want to lose his security clearance. Tr. at 102. He testified that in the future he hopes to use therapy

⁷ The Individual told her that he has not consumed alcohol since January 28, 2017, and she has no evidence that he has consumed alcohol since then. Tr. at 18.

rather than alcohol to address any emotional crisis. Tr. 102. The Individual acknowledged that he does not feel good about his relationship with the Current Therapist, although he has not tried to find a new counselor. Tr. at 103, 124. He admitted that to some extent he is just going through the motions by seeing the Current Therapist. Tr. at 125. The Individual agreed that he is in danger of relapsing if he does not get his depression and anxiety under control. Tr. at 128. However, he testified that he does not currently believe that his depression and anxiety are out of control. Tr. at 128.

The IOP Therapist testified on the Individual's behalf at the hearing. She testified that she met with the Individual once a week during the IOP, and for a month after that as part of a step-down program.⁸ Tr. at 109. Noting that the Individual was previously unaware that he was using alcohol as a coping mechanism, the IOP Therapist opined that the Individual was now aware of his motivations for using alcohol, and a lot of his therapy was directed at building awareness and coping skills that did not involve drinking. Tr. at 112-113. The IOP Therapist acknowledged that the Individual's anxiety and depression were root causes of his alcohol problems. Tr. at 120. She stated that she worked with the Individual to help him become aware of his feelings, including depression and anxiety, and to take appropriate action in response. Tr. at 113-114. The Individual reported that he was responding to this therapy, and she believed that the Individual was responding to therapy, including those components that were addressing his anxiety and depression. Tr. at 113, 121. The IOP Therapist also provided the Individual with grief counseling. Tr. at 113. She opined that the Individual's depression was grief related and situationally appropriate. Tr. at 113, 121. She testified that "we had stopped working around the addiction and were working on coping skills." Tr. at 114-115. She felt that the Individual was "earnest." Tr. at 115. The IOP Therapist reported that the Individual appeared to be "very committed to remaining sober, even past the requirements of the program." Tr. at 121-122. She opined that he has achieved sobriety. Tr. at 122. The IOP Therapist testified that "research suggests that the rapport between a therapist and their client is a greater predictor of a positive outcome than the counselor's education level or modality." Tr. at 118.

The Psychologist observed the testimony of the other six witnesses before providing his own testimony. The Psychologist testified that he believes that the Individual has successfully abstained from drinking since his last arrest. Tr. at 135. However, the Psychologist further testified that, in his opinion, the Individual "has not done the things that will help protect him from resuming drinking." Tr. at 135. He noted that the Individual has developed a tolerance to alcohol, and that the Individual was using alcohol to cope with grief and pressure from his family as well as his loneliness. Tr. at 136-137. The Psychologist went on to opine: "The importance of that is that the loneliness, the depression, the pressure from families, all of that are the fuel that push him to drink, and the point of the drinking is not as he says, and I agree with him, is not to get intoxicated, it is to blunt those emotions, it is to allow himself to function." Tr. at 137. He further noted that the Individual does not have "a lot of coping skills." Tr. at 140. The Psychologist testified that he was impressed with the testimony of the Current Therapist. Tr. at 138. He noted that she was not treating the Individual's alcohol issues, but rather the issues that underlie the Individual's alcohol problem. Tr. at 139. The Psychologist opined that the Individual will not be able to continue abstaining from alcohol unless he successfully addresses these underlying issues. Tr. at 139. The

⁸ The IOP Therapist subsequently left the provider of the IOP program, and started practicing in another city. Tr. at 109.

Psychologist testified that the Individual's prognosis was not favorable. Tr. at 140-141. The Psychologist stated that the Individual has not been as diligent in pursuing his recovery as he could have been. Tr. 141, 144. The Psychologist questioned the Individual's commitment to his recovery, noting his failure to seek out a new therapist when he realized he was not comfortable with the Current Therapist as well as the Individual's decision to discontinue AA. Tr. at 141-145, 147-48. The Psychologist noted that the Individual could have been properly diagnosed with a Mild Alcohol Disorder. Tr. at 147.

V. ANALYSIS

The record shows that the Individual has a pattern of misusing alcohol in an attempt to cope with grief, loneliness, anxiety, and depression. This maladaptive use of alcohol resulted in two DUIs, on January 28, 2017, and November 1, 2014. After the first DUI, the Individual sought professional assistance, recognized that he had a problem with alcohol, and resolved to abstain from using alcohol. However, he subsequently decided that he would continue drinking, albeit in a limited and controlled fashion, and ultimately received a second DUI. The Individual now recognizes that he needs to abstain from using alcohol. He further realizes that, in order to avoid further maladaptive alcohol use, he needs to address his underlying grief, loneliness, anxiety, and depression, and to develop better coping and social skills. However, his recovery has not yet progressed sufficiently to resolve the security concerns raised by his history of repeated maladaptive alcohol use.

The Individual's criminal activity clearly results from his maladaptive alcohol use. I am therefore convinced that as long as the Individual abstains from alcohol use, he will avoid further criminal activity. However, the converse is also true. His history shows that if the Individual were to resume alcohol use, he is likely to engage in criminal activity again. Accordingly, the question before me under both Guideline G and Guideline J is whether the Individual's recovery has progressed far enough to sufficiently mitigate the security risk that he will consume alcohol again.

It is well settled that Part 710 places the burden of persuasion on the individual, because it is designed to protect national security interests. *See, e.g., Personnel Security Hearing*, PSH-17-0015 at 3 (2017). This is not an easy burden for an 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). Accordingly, the Individual must come forward with evidence to convince me that granting or restoring 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).

I note that most of the mental health and substance abuse professionals who have worked closely with the Individual, including the IOP Therapist, the IOP Executive Director, the Present EAP Counselor, and the Former EAP Counselor, have been highly impressed by him, and have expressed confidence that he will continue to maintain his abstinence from alcohol use. On the other hand, the Current Therapist and the Psychologist have expressed serious reservations about

the Individual's prognosis.⁹ I note that the Individual has recognized that he has an alcohol problem and is working hard to address that problem. He has completed the IOP, obtained individual counseling, and most importantly, he has been able to stop consuming alcohol for almost 11 months. The IOP and individual therapy have obviously had positive benefits for the Individual; he now recognizes that his issues with depression, anxiety, loneliness and grief have fueled his alcohol problem and that he needs to develop coping and social skills. However, I find that the Individual has not sufficiently resolved the security concerns raised by his alcohol problem and his two DUI arrests. The Individual's therapy remains a work in progress. He has not yet had the opportunity to work with a compatible therapist on an extended basis in order to address the issues underlying his alcohol problem. As long as those issues have not been sufficiently addressed, the possibility of relapse, and the associated criminal behavior, is unacceptably high.

Guideline G sets forth four conditions which can mitigate security concerns arising from an individual's maladaptive alcohol use, two of which pertain to the present case and provide mitigation of the security concerns arising under Guideline G.¹⁰ Guideline G at § 23.

Section 23(b) of the Guidelines provides that security concerns arising from alcohol use may be mitigated if "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." The Individual has clearly acknowledged his pattern of maladaptive alcohol use, and has taken action to overcome this problem, by completing an IOP program, obtaining individual counseling, and abstaining from alcohol use for over ten months in accordance with treatment recommendations.

Section 23(d) of the Guidelines provides that security concerns arising from alcohol use may be mitigated if: "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." The Individual has successfully completed the IOP and has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations.

⁹ I note that the Psychologist's reservations concerning the Individual's prognosis are based in part upon his doubts about the Individual's commitment to his sobriety: specifically, the Individual's reluctance to participate in AA and his alleged failure to find a new counselor once he realized that the Current Counselor was a poor fit for him.

¹⁰ Two mitigating conditions set forth in Guideline G are not present in this case. Section 23(a) provides that security concerns arising from alcohol use may be mitigated if "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 good judgment." Clearly, the passage of time alone is not sufficient enough to mitigate the security concerns raised by the Individual's maladaptive alcohol use, since the Individual's last episode of excessive alcohol consumption occurred less than a year ago. Nor was the Individual's DUI an infrequent behavior, since it recurred. There are no unusual circumstances present that provide mitigation. Section 23(c) of the Guidelines provides that security concerns arising from alcohol use may be mitigated if: "the individual is a current employee who is participating in a counseling or treatment program, *has no history of previous treatment and relapse*, and is making satisfactory progress." (emphasis added). The Individual in this case has a history of previous treatment or relapse.

While these two conditions have been met to some extent, they do not provide sufficient mitigation of the security concerns raised by the Individual's maladaptive alcohol use and his two DUIs, since his therapy for the underlying root causes of his maladaptive alcohol use, his anxiety, depression, lack of coping skills, and loneliness, is only in its beginning stage, and the Individual has not been able to establish an effective ongoing relationship with a therapist. Moreover, the Individual is neither currently receiving treatment specifically for his alcohol issue, nor participating in any program such as AA or aftercare in order to maintain his sobriety.

Accordingly, I find that the security concerns raised by the Individual's two DUIs and maladaptive alcohol use under Guidelines G and J have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the security concerns raised under Guidelines G and J. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would not be clearly consistent with the national interest.

Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals