



his security clearance had been suspended and that, pursuant to 10 C.F.R. § 710.21, he was entitled to a hearing before an Administrative Judge.

The individual requested a hearing and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on March 15, 2018. On May 18, 2018, I convened a hearing pursuant to 10 C.F.R. §§ 710.25(d), (e) and (g). At the hearing, I took testimony from the individual, his sponsor in Alcoholics Anonymous (AA), a leader from his church, and the DOE psychologist. The LSO submitted 11 exhibits, marked as DOE Exhibits 1 through 11. The individual submitted seven Exhibits, marked as Exhibits A through G.

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting 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.

## **III. 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. The LSO described its security concerns in a "Summary of Security Concerns" attached to the Notification Letter. In that document, the LSO indicated that its concerns pertained to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) ("Adjudicative Guidelines").

Guideline G of the Adjudicative Guidelines is titled "Alcohol Consumption." This Guideline provides that "[e]xcessive 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. As support for its invocation of Guideline G, the LSO

relied upon the DOE psychologist's diagnosis of the individual with Alcohol-Related Disorder, Mild, under the DSM-5. Ex. 1 at 1. The LSO also alleged, citing evidence from the individual's PSI and from other records, that the individual had been involved in three alcohol-related incidents. First, the LSO stated that on April 28, 2017, the individual was arrested and charged with aggravated DUI. *Id.* According to the LSO, the individual registered a blood alcohol concentration of 0.22 and 0.20 and admitted to drinking up to half of a 750 ml bottle of whiskey. *Id.* Second, the LSO alleged that, on July 12, 1990, the individual was arrested in Colorado and charged with DUI. *Id.* Third, the LSO alleged that on October 28, 1989, the individual was arrested in Wyoming for disorderly conduct and that the individual consumed alcohol prior to the arrest. *Id.* Finally, the LSO stated that the individual had admitted, in his PSI on July 27, 2017, to having developed a problem with alcohol and to being an alcoholic. *Id.*

Under Guideline G, diagnosis of an alcohol use disorder by a duly qualified mental health professional can raise a security concern and may disqualify an individual from continuing to hold a security clearance. Guideline G at ¶ 22(d). Alcohol-related incidents away from work, such as driving under the influence or disturbing the peace, can also raise a security concern. Guideline G at ¶ 22(a). In light of the information available to the LSO, it was proper for the LSO to invoke Guideline G.

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

##### **A. History of Alcohol Use**

Earlier in his life, the individual was arrested on two separate occasions for conduct related to alcohol consumption. In October 1989, on the night before his twenty-first birthday, he was drinking with friends in a college dorm in Wyoming. Ex. 10 at 43. The police were called and he was arrested for disorderly conduct. *Id.* In July 1990, the individual attended a barbeque picnic and had two beers in quick succession before departing in his vehicle. *Id.* at 40. He was subsequently arrested for driving under the influence of alcohol.<sup>3</sup> *Id.* at 40-41.

The individual drank infrequently and usually in moderate quantities between 1994 and 2012. *See* Ex. 10 at 53-54; Ex. 6 at 3. Starting in 2012, the individual began drinking more often and in greater amounts. Ex. 10 at 54. He was experiencing a number of stresses at home and at work. Tr. at 101. By 2015, he was consuming up to three or four beers about four times a week. Ex. 10 at 54-55. That same year, he was having difficulty sleeping. *Id.* at 56. He stopped drinking beer and began consuming about two drinks of rum or whiskey about four times a week after work. *Id.* at 57. He stated in his PSI that he would use alcohol "to make my brain get quiet." *Id.* at 58. The individual drank to intoxication about three times a month. *Id.* at 59.

Around March 2016, the individual went to his employer's Employee Assistance Program (EAP). Ex. 6 at 4; Tr. at 89. An EAP counselor suggested that he attend AA meetings. Tr. at 89. The individual attended his first AA meeting in April 2016. Ex. 10 at 62. In early May 2016, an AA participant agreed to be the individual's sponsor and assist him in his recovery. Tr. at 17. Around this time, on May 13, 2016, the individual began an extended period of sobriety, coupled with a

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<sup>3</sup> In his PSI, the individual referred to the charge as "Driving While Ability is Impaired." Ex. 10 at 40.

high level of attendance at AA meetings. Tr. at 92. He estimated in his PSI that he may have attended over 100 AA meetings in 90 days. Ex. 10 at 63.

Between April 2016 and January 2017, the individual met eight times with an EAP counselor, who taught him meditation techniques. Ex. 6 at 4. In 2016 and early 2017, he also attended religious educational courses at a Catholic church, first alone and then with his wife joining him. Ex. 10 at 75; Ex. 6 at 4. His wife was Catholic but he was not a member of the faith himself. Tr. at 137. The individual remained abstinent from May 2016 through March 2017. Ex. 10 at 35-36. As of April 2017, the individual was working on the fifth step of AA's 12-step program. Tr. at 18.

In April 2017, the individual was dealing with some stresses related to his son's health and his daughter's efforts to obtain a college education. Tr. at 125-126. Sometime during the week beginning Sunday, April 24, 2017, he ended his abstinence and consumed whiskey.<sup>4</sup> Tr. at 8; Ex. 10 at 72; Ex. 6 at 3. On Friday, April 28, 2017, his wife left on a trip to pick up his daughter and help her move back home. Ex. 10 at 37; Tr. at 8. He went to a river to fly fish and drank whiskey while he fished. Tr. at 8. He believes he may have had about six shots of whiskey. Tr. at 78. He then departed the river in his vehicle and was pulled over and arrested by police shortly after exiting a gas station. Ex. 10 at 14-17. Breath tests registered a BAC of 0.22 and 0.20, over twice the legal limit. Ex. 8 at 3, 5; Ex. 10 at 17. He was cited for aggravated DUI.<sup>5</sup> Ex. 8 at 1, 6. After being bailed out that evening, the individual continued to drink through Sunday of that weekend. Tr. at 8-9.

## **B. Initial Recovery Period**

On Sunday, April 30, 2017, the individual contacted his wife and his AA sponsor to inform them about his DUI. Tr. at 8-9. The next day, he reported his DUI to his LSO. Ex. 8 at 1. His employer began to require him to take random alcohol tests, as often as twice a week.<sup>6</sup> Ex. A at 1. The individual returned to abstaining from alcohol, with a sobriety date of May 1, 2017. Tr. at 98.

A medical evaluation conducted at the request of the LSO recommended that he participate in an intensive outpatient program (IOP). Ex. 6 at 20. The individual began an IOP on May 25, 2017. Ex. D at 1. The treatment consisted of group therapy sessions and individual counseling. Ex. 10 at 80-82. The individual had never stopped attending AA meetings, but he now began attending on a more frequent basis. Ex. 10 at 72-73. His records indicate that he attended a total of 33 AA meetings in May 2017 and 24 meetings in June 2017. Ex. B at 1.

In July 2017, he reduced his AA attendance to about three or four meetings per week and began a new evening program at church. *See id.* On July 27, 2017, he was interviewed for his PSI. In his

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<sup>4</sup> The individual testified at the hearing that he bought and consumed whiskey on the Thursday evening before his DUI, which was April 27, 2017. Tr. at 8, 77. In his PSI, he stated that he started drinking "earlier in the week." Ex. 10 at 72. The DOE psychologist's report states that the individual's relapse occurred on Wednesday, April 26, 2017. Ex. 6 at 3.

<sup>5</sup> At the hearing, the individual indicated that the DUI charges against him were dismissed when, for procedural reasons, the testimony of the responding police officers was not admitted into evidence. Tr. at 95-96.

<sup>6</sup> The individual took Breath Alcohol Content (BrAC) tests and urine tests for ethylglucuronide (EtG) and ethylsulfate (EtS), two metabolites of alcohol. *See* Ex. A

PSI, he acknowledged that he had developed a problem with alcohol, and he referred to himself as “an alcoholic.” Ex. 10 at 125. He stated an intention to never drink alcohol again. *Id.* at 45. The individual completed his IOP on August 17, 2017. Ex. D at 1. The counselor who treated him in that program did not recommend that he participate in an aftercare program. *See id.*; Tr. at 153.

The DOE psychologist evaluated the individual on September 25, 2017. Ex. 10 at 79. As observed, the DOE psychologist diagnosed the individual with Alcohol-Related Disorder, Mild. Ex. 6 at 8. She further found that the individual was in early remission and that he had not demonstrated adequate evidence of rehabilitation or reformation because his relapse was too recent.<sup>7</sup> *Id.* However, the DOE psychologist found that the individual could demonstrate adequate evidence of rehabilitation by remaining abstinent for 12 months while attending AA meetings at least twice weekly, proceeding with the 12-step method, and maintaining a relationship with a sponsor. *Id.*

### **C. Additional Recovery and Rehabilitation**

The evidence indicates that as of the date of the hearing, May 18, 2018, the individual had abstained from alcohol for over a year. At the hearing, the individual testified that he had remained sober since May 1, 2017. Tr. at 98. His testimony is supported by results from alcohol testing. *See* Ex. A. Between May 2017 and March 1, 2018, he took alcohol tests on at least 40 occasions, often taking more than one type of test at a time.<sup>8</sup> *Id.* All the results were negative. *Id.* To demonstrate his sobriety between March 2017 and the date of the hearing, the individual arranged for additional alcohol testing on May 11, 2018.<sup>9</sup> Ex. G. The tests showed no evidence of alcohol use. *Id.*

Between September 2017 and May 2018, the individual continued to attend AA meetings, usually four or more per week. Ex. B. He leads AA meetings himself and has begun to assist other AA participants. Tr. at 10, 103. He has completed all 12 steps in the 12-step program. Tr. at 24. He has maintained his relationship with his sponsor, whom he sees at meetings at least two or three times a week. Tr. at 31. Additionally, the individual has increased his involvement in the Catholic Church. Beginning in September 2017, the individual attended a course and took the necessary steps to prepare himself to become a church member. Tr. at 9, 45. On March 31, 2018, the individual completed the process of joining the church. Ex. C; Tr. at 49. The individual views his participation in the church as an integral part of his recovery from his alcohol problems. At the hearing, he characterized his journey after his DUI as “a program of recovery and faith formation.” Tr. at 9.

The individual’s witnesses described positive changes in the individual. His AA sponsor testified that the individual “is not the same man I met a little over two years ago.” Tr. at 19. His sponsor stated that when the individual relapsed in April 2017, the individual was “still questioning with himself whether or not he was truly an alcoholic.” Tr. at 20. After that event, the individual made

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<sup>7</sup> In her report, the DOE psychologist also observed that the individual, both in his PSI and in her interview with him, initially presented his relapse as occurring on the date of his DUI when in fact it had been on a day before the DUI. Ex. 6 at 8; *see also* Ex. 10 at 35-36, 71. This difficulty accurately describing his relapse, she asserted, was evidence that “he is still in some denial/minimization.” Ex. 6 at 8.

<sup>8</sup> The individual testified that the last test conducted by his employer was on February 8, 2018. Tr. at 100. However, the records indicate that his employer tested him as recently as March 1, 2018. Ex. A at 65.

<sup>9</sup> The individual took a phosphatidylethanol (PEth) test and two EtOH tests that looked for the presence of ethanol. Ex. G; Tr. at 115.

a “shift,” his sponsor stated. Tr. at 32-33. The individual became more honest with himself and with others about his alcohol problem and more willing to accept help. Tr. at 18-20, 32-33. His sponsor believes that the individual has made enough progress in his recovery to be able to serve as a sponsor to others. Tr. at 19. His sponsor called the individual’s commitment to abstinence “wholehearted” and predicted that the individual will not drink again. Tr. at 27-28.

The church leader who testified at the hearing is a teacher in the adult conversion program that the individual completed prior to joining the Catholic Church. Tr. at 42. The church leader stated that he had observed a “personal transformation” in the individual starting in September 2017. Tr. at 46. The church leader believes that the stresses in the individual’s life have not changed since that time but that the individual has learned to deal with those stresses in a more productive way. Tr. at 64-65. He indicated that the individual can now turn to prayer and personal study to assist him in dealing with problems and to help him to “get centered.” Tr. at 66.

The individual does not intend to drink alcohol again. Tr. at 109. He plans to continue to maintain his abstinence by attending AA meetings and remaining active in church. Tr. at 134. He testified that he has had thoughts about drinking alcohol but that he has had no close calls since April 2017. Tr. 102; *see also* Tr. at 36. He asserted that one reason he has been able to remain abstinent is that he has developed a broader support network. Tr. at 103. The individual’s support network includes his sponsor, friends he has met through AA and church, and his immediate and extended family. Tr. at 65-66, 103, 124. The individual asserted that he has improved his relationships with his wife and his children. Tr. at 103, 138-140. According to the church leader, the individual’s involvement in church has been particularly helpful in strengthening the relationship between the individual and his wife. *See* Tr. at 62.

At the hearing, the individual did not dispute the DOE psychologist’s diagnosis. Tr. at 82. He acknowledged his alcohol problem and agreed that he is an alcoholic. Tr. at 10, 82. Further, he did not dispute any of the material facts in the Summary of Security Concerns.<sup>10</sup> Tr. at 76. However, he contended that those security concerns have been mitigated. Tr. at 83; Ex. 2 at 2-3. He stated that “my life and my basis of life and my priorities in my life are different today.” Tr. at 129.

The DOE psychologist attended the hearing and testified at its conclusion. In her testimony, she stated that as of the date of the hearing she would revise her diagnosis to “alcohol use disorder in sustained remission.” Tr. at 149. She found that the individual “probably has a very good to excellent prognosis in sustaining his abstinence from alcohol.” *Id.* In reaching the new diagnosis, she noted that he had complied with her treatment recommendations by maintaining abstinence for 12 months, participating in AA more than twice weekly, proceeding in the 12-step program, and continuing his relationship with his sponsor. Tr. at 147. She emphasized that 12 months is “not an arbitrary period of time” and that individuals who have maintained sobriety for that amount of time are more likely to remain abstinent. Tr. at 150. She further found that in addition to meeting or

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<sup>10</sup> The individual did assert that the Summary of Security Concerns may have mischaracterized his statement in his PSI regarding the amount of whiskey he consumed on the day of his arrest in 2017. Tr. at 76. The Summary of Security Concerns stated that “he admitted [in his PSI] to drinking up to half of a 750 ml bottle of whiskey prior to his arrest.” Ex. 1 at 1. The individual asserted that he did not admit to drinking up to half the bottle, but rather denied consuming half the bottle. Tr. at 76-77. In his PSI, when asked if he drank half the bottle, he stated, “No, I don’t think it was half.” Ex. 10 at 13. Regardless, the individual admits that he drove while intoxicated. Tr. at 96.

exceeding her treatment recommendations, the individual had supported his recovery through a change in perspective and by developing his spiritual life. Tr. at 149-50.

In response to a question about whether the individual's relapse in April 2017 indicated an increased risk of relapse in the future, the DOE psychologist stated that while "you have to take that into consideration" it did not alter her prognosis. Tr. at 155. She stated again that based on the individual's progress in his recovery over the past 12 months, his overall his chances of remaining sober are "very good to excellent." *Id.*

## 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 be restored. I 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.

As an initial matter, it is necessary to recall the specific security concerns at issue. Guideline G provides that a diagnosis of an alcohol use disorder by a duly qualified mental health professional can raise a security concern and may disqualify an individual from continuing to hold a security clearance. Guideline G at ¶ 22(d). Here, the DOE psychologist diagnosed the individual with an alcohol-related disorder, although a mild one. Under Guideline G, alcohol-related incidents away from work, including driving under the influence and disturbing the peace, also can raise a security concern. Guideline G at ¶ 22(a). In the instant matter, the individual was cited for DUI in 2017, and, earlier in his life, was cited for intoxicated driving and for disorderly conduct. Consequently, as noted above, legitimate security concerns exist as a result of the individual's alcohol use.

Guideline G nevertheless describes conditions that can mitigate security concerns arising from alcohol consumption. At least three of those conditions apply in the instant matter.

The first of these conditions arises when "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." Guideline G at ¶ 23(b). The individual has satisfied all of the components of this mitigating condition. The individual has acknowledged his problems with alcohol to others and has become more honest with himself about his alcohol problem. The individual also has provided evidence, through witness testimony and his exhibits, of significant actions to overcome his alcohol problem. These include his frequent and sustained participation in AA meetings, his completion of an IOP, and his commitment to finding a spiritual basis for his recovery through involvement in his church. His abstinence for over a year, as established by alcohol testing and his own testimony, demonstrates a clear and established pattern of alcohol consumption in accordance with the DOE psychologist's treatment recommendations.

Another provision under Guideline G states that security concerns can be mitigated when “the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption.” Guideline G at ¶ 23(d). Given that the individual completed a treatment program and that he has maintained abstinence for over a year, this mitigating condition applies as well. As observed, the individual’s counselor in his IOP did not recommend that he participate in an aftercare program.<sup>11</sup>

Guideline G also provides that security concerns under Guideline G can be mitigated when “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment.” Guideline G at ¶ 23(a). This condition applies in the instant matter with respect to the concerns raised regarding the individual’s disorderly conduct and drunk driving when he was 21 years old. Because these events occurred in 1989 and 1990, they have limited relevance to the individual’s current reliability, trustworthiness, and judgment. Moreover, even if it could be assumed that the individual’s DUI in 2017 represented the re-emergence of an old pattern of alcohol-related conduct, the individual has demonstrated that he has made changes in his life that establish a new pattern of abstinence.

If there is any reason to be cautious about the durability of the individual’s recovery, it is that the individual remained abstinent for nearly a year while attending AA meetings and receiving EAP counseling, only to relapse and be charged with DUI. Guideline G suggests that security concerns could remain higher for individuals who have a history of treatment and relapse. Guideline G at ¶ 23(c). Nevertheless, this consideration should be accorded only so much weight. The DOE psychologist’s testimony is persuasive that the individual’s relapse in April 2017 should be considered in light of all the actions he has taken over the past year to recover from his alcohol use disorder. Prior to his April 2017 relapse, the individual had participated in AA but he had not completed an IOP, worked all 12 steps, maintained abstinence for a full year, or taken other actions to support his recovery such as joining the church. Today, his recovery is sturdier and his dedication to it is impressive. Importantly, in the expert opinion of the DOE psychologist, his prognosis for continued abstinence is very good to excellent.

For the above reasons, I conclude that the security concerns under Guideline G have been sufficiently resolved.

## **VI. Conclusion**

In the above analysis, I have found that the LSO had sufficient derogatory information to invoke Guideline G. However, after considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the individual has sufficiently mitigated the security concerns that the LSO has raised. Accordingly, the individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the individual’s security clearance should be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

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<sup>11</sup> As observed, the individual’s counselor in his IOP did not recommend that he participate in an aftercare program.



Gregory S. Krauss  
Administrative Judge  
Office of Hearings and Appeals