

(hereinafter cited as “Ex.”). The Individual submitted nine exhibits, marked as Exhibits A through I.

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 her eligibility for a security clearance. That information pertains to Guideline G (Alcohol Consumption) 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 that the Individual was cited and charged for an aggravated alcohol offense after passing out in her parked car in 2007, drank to intoxication two times per month from 2010 to 2016, drank to intoxication once per week from 2016 to 2017, and came in late to work three times a year in 2016 and 2017 after consuming too much alcohol the night before. Ex. 1 at 1–2. The LSO also alleges that the Individual’s daughter expressed concern about her alcohol consumption in late 2016 and that a DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate. Ex. 1 at 1–2. Given this information, the LSO’s security concerns under Guideline G are justified.

III. REGULATORY STANDARDS

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 her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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

In 2007, the Individual was at dinner when a friend suggested she try an orange flavored liqueur. Ex. 10 at 8; Ex. 5 at 1. The Individual liked the taste and bought a bottle of the liqueur on her way home. Ex. 10 at 8. While driving home, the Individual received a phone call and pulled over to a park so she was not talking while driving. Ex. 5 at 1. She opened the bottle of liqueur for just a taste. Ex. 5 at 1. As the conversation went on, she had another taste, then another. Ex. 5 at 1; Ex. 10 at 12. By this point her judgment was impaired and she decided to continue drinking the liqueur while her car remained parked with the keys in the ignition. Ex. 10 at 12, 22. Eventually, the Individual lost consciousness. Ex. 10 at 12. Police found her in her vehicle and had her transported by ambulance to a hospital. Ex. 5 at 1. Her Blood Alcohol Content at the hospital was .28. Ex. 10 at 20.

When the Individual woke up, she had no memory of the incident. In fact, she did not know the police had been involved in the incident until about three months later when she received citations in the mail for Aggravated Driving Under the Influence (DUI) and Driving with an Open Container. Ex. 5 at 1; Ex. 10 at 23. The Individual complied with all court requirements and recommendations. Ex. 10 at 24–25. She installed an interlock device on her vehicle and had no issues, except for a false positive caused by cold medicine. Ex. 10 at 25, 27. Later, when the Individual first applied for a clearance, she disclosed this incident to investigators. Ex. 10 at 32.

The LSO had concerns about this incident when it did its routine reinvestigation to renew the Individual's clearance. Ex. 4. It conducted a PSI of the Individual in December 2017. Ex. 10. The Individual told the Investigator that the only reason she had consumed so much alcohol on that night in 2007 was that the liqueur tasted so good. Ex. 10 at 16. She has not consumed that particular liqueur since then. Ex. 10 at 16. She has had no other alcohol-related interactions with law enforcement. Ex. 10 at 29.

During the PSI the Individual reported that, from ages 21 to 40, she rarely consumed alcohol. Ex. 10 at 37. Around 2005, the Individual started going out for wine with friends about once every two weeks. Ex. 10 at 40–41. She had become more appreciative of wine and enjoyed trying different types and learning about them. Ex. 10 at 41. She would consume about two glasses of wine over two or three hours. Ex. 10 at 41–42. She drank to intoxication about once monthly. Ex. 10 at 42. It took about four glasses of wine for her to become intoxicated. Ex. 10 at 42. Between 2005 and 2010, the Individual gradually consumed more alcohol until she was drinking one bottle of wine over the course of every weekend. Ex. 10 at 47–48.

In early 2016, the Individual developed a food allergy that prevented her from drinking beer or wine. Ex. 10 at 45, 47. She switched to vodka and began drinking one or two 750 mL bottles every week. Ex. 10 at 45, 52. She would consume approximately one-third to one-half of a bottle of vodka two or three times per week and drank to intoxication two or three times per month. Ex. 10 at 53–55. Her alcohol consumption increased again in 2017; she told the Investigator that it was because of boredom. Ex. 10 at 55. She was, at that point, consuming about two 750 mL bottles of vodka every week and drinking to intoxication about once per week. Ex. 10 at 56. A few times per year she would experience memory loss while consuming alcohol. Ex. 10 at 60.

The Individual also described social situations in which she “got carried away” and consumed more alcohol than she had originally intended to consume. Ex. 10 at 62–63. This resulted in her driving

while impaired about five times in 2016. Ex. 10 at 62. She reported being late to work due to hangovers about three times per year for 2016 and 2017. Ex. 10 at 66–68. In 2017, she went to work while there was still alcohol in her system from the night before such that she felt like she was not clearheaded. Ex. 10 at 69–71. About a year before the PSI, the Individual’s adult daughter told her that she thought the Individual was drinking too much. Ex. 10 at 75–76. After that, the Individual decided that she would only consume alcohol on the weekends, and generally held to that standard. Ex. 10 at 77.

The Individual consumed alcohol on only two occasions following the PSI: Christmas of 2017 and New Year’s Day, January 1, 2018.² Ex. 2 at 5; Tr. at 64. Because the security concerns were alcohol-related, the LSO referred the Individual to the Psychologist for an evaluation. The Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, and determined that she had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 7 at 5. The Psychologist made the following recommendations for rehabilitation:

- The Individual should abstain from alcohol for no fewer than six months;
- The Individual should attend alcohol rehabilitation counseling, either with a therapist or through attending Alcoholics Anonymous (AA) meetings.
- The Individual should be subject to random alcohol testing no fewer than six times throughout the six months of treatment.
- The Individual should submit to at least one randomly conducted Phosphatidylethanol (PEth) test.³

Ex. 7 at 6. The Psychologist also recommended that, if the Individual chose to attempt reformation instead of rehabilitation, she should remain abstinent from alcohol for at least 18 months, undergoing random alcohol testing at least monthly. Ex. 7 at 6. As part of the Psychologist’s evaluation, the Individual submitted to a PEth test. Ex. 7 at 4. The results were consistent with the Individual’s assertions during the Psychologist’s examination as to the date of her last alcohol consumption. *See* Ex. 7.

In early February 2018, about two weeks after meeting with the Psychologist, the Individual met with the Director of the Employee Assistance Program (EAP). Ex. 2 at 2. She signed an Employee Recovery/Abstinence Agreement and was referred to a chemical dependency facility for assessment. Ex. 2 at 2. She underwent assessment at the chemical dependency facility about a week later. Ex. 2 at 2. In March 2018, the Individual began weekly sessions with a private substance abuse counselor. Ex. 2 at 2. The Individual received the DOE’s list of security concerns in mid-April 2018. Ex. 2 at 2.

Between February and May 2018, the Individual underwent several tests to determine whether she had used alcohol. Ex. 2 at 2. The results were all negative for alcohol use. Ex. 2 at 6–17, 21. As part of her Employee Recovery/Abstinence Agreement, the Individual is subject to random drug

² The Psychologist issued a correction to her report, citing December 31, 2017, as the last time the Individual consumed alcohol. Email from the Psychologist to Saul J. Ramos, Attorney, NNSA (July 2, 2018). *See also, infra*, n.4 (regarding the date of the Individual’s last alcohol consumption for purposes of this decision).

³ A PEth test indicates whether an individual has consumed alcohol heavily within the prior several weeks. Ex. 7 at 9 (report of physician interpreting Individual’s PEth test results).

and alcohol screenings twice monthly through February 2019. Ex. 2 at 2. The Individual entered into the record a letter from her counselor which states that the Individual has been open with the counselor, and that she is engaged in the therapeutic process. Ex. 2 at 18. The letter also states that the Individual is “benefitting from the process of self-reflection and assessment that these events have invited her into,” and that the Individual has “a very optimistic prognosis.” Ex. 2 at 18. The Individual entered into the record a letter from the EAP Coordinator which states that she has remained compliant with her recovery agreement. Ex. 2 at 19.

At the hearing, I took testimony from the Individual, the Psychologist, two of the Individual’s supervisors, the Individual’s counselor, and the Individual’s sister.

The first supervisor had known the Individual for about nine years. Tr. at 11. Though their relationship was mostly professional, they had interacted outside the office at the occasional work gathering. *Id.* She had no concerns about the Individual professionally and had never seen her under the influence of any substance. *Id.* at 11–12. She testified that the Individual had told her about her recovery efforts and that the Individual had stated that she intended to remain abstinent from alcohol. *Id.* at 13. The second supervisor had known the Individual for about two years. Tr. at 37. He only knew the Individual professionally and testified that he had never seen the Individual under the influence of any substance. *Id.* at 38.

The Individual’s counselor testified that the Individual had a good prognosis. Tr. at 19. She testified to her belief that the Individual did not intend to return to consuming alcohol. *Id.* At the time of the hearing, the Individual had a follow-up appointment scheduled for the following month. *Id.* at 20.

The Individual’s sister testified that she sees the Individual a few times a week and texts her every day. Tr. at 25. She asserted that the Individual had been abstinent since the beginning of the year. *Id.* at 26. She testified that, although the family serves alcohol at its events, the Individual faces no family pressure to consume alcohol. *Id.* at 26–27. She testified that she had seen many positive changes in the Individual since the Individual stopped consuming alcohol, specifically citing sharper cognition, improved health, and increased happiness. *Id.* at 29, 31.

The Individual testified that she last consumed alcohol on January 1, 2018.⁴ Tr. at 64. She received the Psychologist’s recommendations later that month and immediately began working on implementing them. Ex. 7. Tr. at 46–47. This included starting counselling, submitting to three PEth tests, and signing a recovery agreement with her employer that required one year of abstinence with random drug and alcohol screenings. Tr. at 47–48, 57. Initially, the Individual intended to remain sober for the year required by her employer’s recovery agreement and then reassess whether she wanted to resume alcohol consumption. *Id.* at 48. However, by the hearing date, the Individual had decided to remain abstinent for the foreseeable future. *Id.* She testified that alcohol had a larger impact on her life than she had previously realized. *Id.* at 50. She cited several benefits of her abstinence, including more awareness, more mental acuity, more diligence at home and work, and improvements in her health. *Id.* at 48–49. She testified that she feels an increased sense of order in her life. *Id.* at 49. She testified that she is not missing anything by abstaining, but, rather, she is gaining quite a bit. *Id.* at 48. The Individual intends to continue seeing her counselor and noted that

⁴ The record indicates that the Individual’s last alcohol consumption occurred on New Year’s Eve/New Year’s Day 2018. For purposes of this decision, I accept January 1, 2018, as the date of her last alcohol consumption.

the scope of her counselling goes beyond alcohol consumption. *Id.* at 60, 63–64. She entered into the record a letter from her counselor stating the same. Ex. C at 1.

After listening to all of the prior testimony, the Psychologist testified that the Individual has met and exceeded the recommendations set out in her report.⁵ Tr. at 67. She testified that the Individual had no condition that would impair her judgment or reliability, noting in particular the Individual's participation in treatment processes and the fact that the Individual had abstained from alcohol for eight months (January 1, 2018, through the date of the hearing, August 23, 2018), rather than just the recommended six months. *Id.* at 68. She further testified that the Individual has displayed striking honesty since the beginning of the security review process, and that honesty is critical to rehabilitation. *Id.* at 70–71. She gave the Individual a very good prognosis and testified that, in her opinion, the Individual is rehabilitated. *Id.* at 70.

V. ANALYSIS

The issue before me is whether the Individual, as she stands at the time of the hearing, has mitigated the security concerns raised by the Guideline G derogatory information described in the Notification Letter. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security and clearly consistent with the national interest. 10 C.F.R. § 710.27.

In addition to the factors listed in 10 C.F.R. § 710.7(c), Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual's alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or judgment; (2) the individual acknowledges her pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established a pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23(a)–(d).

The record indicates that the Individual has acknowledged her pattern of alcohol abuse. She chose to abstain from alcohol even before she was evaluated by the Psychologist. She sought treatment within two weeks of receiving the Psychologist's treatment recommendations. She has presented evidence of her abstinence through the results of her many drug and alcohol screening tests. She has also presented convincing evidence that she has engaged with her employer's Employee Assistance Program and has sought counseling that addresses not just her alcohol abuse, but its underlying causes. Even though the Psychologist only recommended six months of abstinence, the Individual has remained abstinent for eight months and does not plan to resume alcohol consumption. The Psychologist's testimony that the Individual is rehabilitated was also very persuasive and carries evidentiary weight. The Individual's diligence in implementing the Psychologist's recommendations also demonstrates reliability and good judgment.

⁵ Though the Individual had only been seeing her counselor for five months, instead of the recommended six months, she had been involved in counseling and treatment processes for several months before that. Tr. at 67.

For the foregoing reasons, I find that the Individual has mitigated and fully resolved the DOE's Guideline G security concerns. She has acknowledged her pattern of alcohol abuse, provided evidence of the actions she took to recover, and demonstrated a clear and established pattern of abstinence.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the individual has succeeded in fully resolving those concerns. Therefore, I conclude that restoring DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore 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.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals