

The PSI and Report established substantial security concerns about the Individual. Accordingly, the LSO informed the Individual, in a notification letter dated March 29, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under "Guideline G, Alcohol Consumption." Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to Part 710 of Title 10 of the Code of Federal Regulations (C.F.R.). Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing concerning the matter. At the hearing, the LSO introduced twelve (12) numbered exhibits (Ex. 1–12) into the record and presented the testimony of the DOE Psychologist. The Individual introduced twelve lettered exhibits (Ind. Ex. A–L) into the record and presented the testimony of six (6) witnesses, including himself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as the basis for denying the Individual a security clearance. Ex. 1.

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Notification Letter listed as relevant facts: the DOE Psychologist determined that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate under the *DSM-V*; and the Individual was arrested for DUI and Open Container after consuming nine to ten sixteen-ounce beers and three to four shots of rum before operating a vehicle. Ex. 1. The Individual's alcohol-related incidents away from work and the DOE Psychologist's diagnosis of the Individual with Alcohol Use Disorder, Moderate, justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

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 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.

IV. FINDINGS OF FACT

On July 6, 2018, law enforcement arrested the Individual and charged him with DUI and Open Container after he was in a one-car accident while driving home. Ex. 7 at 3; Ex. 8 at 3; Ex. 11 at 10. The Individual reported during the PSI that, on the day of his arrest, he consumed approximately six sixteen-ounce beers and three to four shots of rum at home between 3:30 and 5:00 p.m. before driving to his sister’s house. Ex. 11 at 15–17. The Individual reported that he consumed approximately three or four more sixteen-ounce beers at his sister’s house, and left to drive home at approximately 7:30 p.m. *Id.* at 20. On his way home, the Individual lost control of his vehicle when making a turn and crashed into a ditch. *Id.* at 11. Law enforcement arrested the Individual and transported him to a county jail, where the Individual’s blood alcohol content (BAC) was measured at .174 g/210L. *Id.* at 25.

The Individual timely reported his arrest on July 9, 2018, and his employer required him to meet with a psychologist employed at the DOE facility at which the Individual works for a substance abuse evaluation. *Id.* at 28–31. The psychologist required the Individual to participate in eight hours of counseling with a licensed clinical social worker (Individual’s Counselor) for substance abuse and twelve hours of Alcoholics Anonymous (AA) meetings before returning to work. *Id.* at 31. On July 28, 2018, the Individual’s Counselor issued a letter indicating that the Individual had completed the required sessions, was making satisfactory progress towards the treatment goals established between the Individual and the Individual’s Counselor, and was discharged from the Individual’s Counselor’s care. Ex. C at 1.

During the PSI, the Individual provided a history of his drinking prior to his arrest for DUI. According to the Individual, he rarely became intoxicated until 2016 when he began consuming between three and twelve beers per sitting on weekends. Ex. 11 at 52. The Individual estimated that he would not consider himself drunk until he had consumed ten beers, and that he could “function pretty well on eight or ten beers.” *Id.* at 41. The Individual reported that he had abstained from alcohol for over a year in the past, but had resumed drinking because he was having problems in his marriage and “really didn’t want to think about [it].” *Id.* at 49–50. The Individual reported that he had not consumed any alcohol since his arrest for DUI, did not believe that he currently had a problem with alcohol, and intended to abstain from alcohol in the future. *Id.* at 57, 62–63.

During the clinical interview with the DOE Psychologist, the Individual admitted that, beginning in 2016, he consumed alcohol every other day in amounts ranging from two to ten beers and, on occasion, one to five shots of hard alcohol. Ex. 9 at 3. The Individual’s increased drinking coincided with his learning that his wife had engaged in extramarital affairs. *Id.* The Individual represented that his drinking decreased somewhat in 2017 after he and his wife reconciled, but that he drank to a “buzz” on a weekly basis and to his definition of “drunk” one to two times per month. *Id.* The Individual maintained that he had not consumed any alcohol since his arrest for DUI. *Id.* The DOE

Psychologist required the Individual to undergo an Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) test after the clinical interview. *Id.* at 5. EtG tests measure alcohol consumed within approximately three days of the test, and PEth tests measure significant quantities of alcohol consumed up to several weeks prior to the test. Ex. 9 at 12. Both tests were negative, which corroborated the Individual's claims of abstaining from alcohol. *Id.*

In her Report, the DOE Psychologist expressed concern that the Individual did not fully accept that he had a problem with alcohol or demonstrate insight into the causes and consequences of alcohol abuse. *Id.* at 6. The DOE Psychologist noted that the Individual used "air quotes" when identifying himself as an alcoholic, generalized an alcoholic as one who drinks "all day every day," and described his own problems with alcohol as limited to prior episodes of drinking too much and losing control. *Id.* The DOE Psychologist also expressed concern that the Individual had been diagnosed with a medical condition exacerbated by alcohol consumption in 2010, and had been warned against consuming alcohol to excess by his physician, but had nevertheless consumed alcohol to excess for several years. *Id.* at 7.

The DOE Psychologist concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *DSM-V* based on consuming alcohol in larger amounts than intended, recurrent use of alcohol in situations in which doing so was physically hazardous, using alcohol despite knowing that it was likely to exacerbate a physical problem, and tolerance for alcohol. *Id.* The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by: abstaining from alcohol for at least twelve months; undergoing random breathalyzer, EtG, and PEth tests over a twelve-month period; and attending AA or a comparable in-person program on a weekly basis for twelve months. *Id.* at 8.

At the hearing, the Individual's wife testified that she had not seen the Individual consume alcohol since the day of his 2018 DUI. Tr. at 17. The Individual's wife characterized his drinking prior to the DUI as "a few alcoholic beverages" while watching football or working in the garage, and that "sometimes his consumption would just be more than . . . he should have." *Id.* at 16. The Individual's wife testified that, prior to his DUI, she "did not think he had a drinking problem . . ." *Id.* at 22. She expressed that she sees the Individual on a daily basis, there is no alcohol in the family home, and she believed that she would know if the Individual resumed drinking. *Id.* at 17–18, 25. According to the Individual's wife, the Individual had realized significant improvements to his health after he stopped drinking and had expressed to her that he intended to abstain from alcohol for the long term. *Id.* at 18, 21.

Four character witnesses – two of the Individual's coworkers, the Individual's supervisor, and a senior manager in the Individual's chain of command – testified as to the Individual's honesty, reliability, trustworthiness, and general upstanding character. *Id.* at 79–80, 85, 95, 106. None of the character witnesses had personal knowledge of the Individual's drinking habits, and several of them recounted their surprise upon learning that the Individual had been arrested for DUI. *Id.* at 81, 86–87, 95, 97, 106.

The Individual testified that he had not consumed alcohol since his arrest for DUI, that his life was better without alcohol, and that he did not intend to consume alcohol in the future. *Id.* at 37. The Individual provided evidence indicating that he was in compliance with the terms of his probation for the DUI, including paying the associated fine, completing twenty-four hours of community

service, testing negative on random drug and alcohol tests, and having an interlock device installed on his vehicle. *Id.* at 38–39; *see also* Ex. D; Ex. E; Ex. G; Ex. H. In addition, the Individual established that he had successfully completed the counseling and AA meetings required by his employer for him to return to work. Tr. at 35–36; *see also* Ex. C (reflecting the Individual’s Counselor’s conclusion that the Individual had satisfactorily completed counseling and was discharged from his care).

The Individual testified that the primary tools he had learned from attending AA meetings were prayer, contemplation, and thinking about things before acting. Tr. at 53–54. After completing the initial AA meetings between July 12 and July 27, 2018, as required for him to return to work, the Individual did not attend any further AA meetings until July 17, 2019. Ex. F. The Individual explained that he did not believe that he needed to attend AA to maintain his sobriety, but wanted to demonstrate that he would do so if necessary to maintain his access authorization. Tr. at 43–44. The Individual did not pursue a sponsor or work the twelve steps during his time attending AA meetings. *Id.* at 53–54.

The Individual testified that he had not followed the DOE Psychologist’s recommendations after receiving the Report because he “felt like since [he] had been completely sober since [the DUI] . . . [that he] felt strong enough that [he] didn’t really need that.” Tr. at 59–60. According to the Individual, he “realized [that he] probably was a mild alcoholic,” but “now [does not] feel like [he] ha[s] any alcohol problem at all.” *Id.* at 53, 68.²

The DOE Psychologist testified last, after observing all of the other testimony offered at the hearing, and opined that the Individual had a moderate to low risk of relapsing into problematic drinking. *Id.* at 126. The DOE Psychologist acknowledged that the Individual’s alleged thirteen-month abstinence from alcohol was sufficient to deem him in remission from Alcohol Use Disorder. *Id.* at 138, 155. However, the DOE Psychologist expressed concern that the Individual had not developed insight into the marital problems that triggered him to drink excessively in the past or sufficient coping mechanisms, and that, without developing better awareness and a more effective support system to lean on when he experienced urges to drink, he was at risk of relapsing into problematic drinking the next time that he experienced problems in his marriage. *Id.* at 123–24, 146. The DOE Psychologist gave the Individual a fair prognosis for avoiding a return to problematic drinking in the future. *Id.* at 124.

With respect to the Individual’s support system, the DOE Psychologist observed that none of the Individual’s character witnesses had demonstrated any knowledge of the Individual’s drinking problems prior to his DUI and that the Individual’s wife had testified that she did not know that the Individual had a drinking problem. *Id.* at 118, 146. Since the Individual’s wife, friends, and colleagues did not exhibit knowledge of the Individual’s drinking problem, the DOE Psychologist speculated that they were not likely to hold him accountable to sobriety or act as an effective

² After the Individual testified that he did not feel that he currently had a problem with alcohol, the Individual was asked by his counsel whether “it’s something that you’re going to have to control and maintain” and that “in reality, you still have a problem?” Tr. at 70. After this leading questioning from the Individual’s counsel, and again following a ten-minute break, the Individual expressed that he did believe that he had a problem with alcohol. *Id.* at 70, 72. I find the Individual’s initial testimony that he did not believe that he had a problem with alcohol more credible than the testimony that he offered after leading questions from his counsel and the opportunity to speak with his counsel during a break in the hearing.

support system. *Id.* at 119. The DOE Psychologist indicated that the Individual might have developed a support system that would hold him accountable and provide him with resources for when he experiences urges to drink had he participated actively in AA meetings as she recommended in the Report. *Id.* at 116–18.

V. ANALYSIS

A. Guideline G Considerations

The Individual asserted that, although he did not comply with all of the DOE Psychologist's recommendations, his abstinence from alcohol and changed perspective demonstrate his rehabilitation. *Id.* at 161–62. For the reasons set forth below, I find that the Individual has not sufficiently mitigated the security concerns under Guideline G for me to conclude that he has met his heavy burden of showing that restoring his 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).

An Individual may mitigate security concerns under Guideline G if:

- (a) 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;
- (b) 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;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) 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.

Adjudicative Guidelines at ¶ 23(a)–(d).

The Individual has not satisfied the mitigating conditions under subparagraphs (b), (c), or (d) of Guideline G of the Adjudicative Guidelines because he is not currently in treatment and failed to participate in AA or undergo the PEth testing recommended by the DOE Psychologist in the Report. The DOE Psychologist testified compellingly as to the importance of the Individual establishing a plan and support system through active participation in AA upon which he can rely when he experiences urges to drink. The Individual completed only the minimum number of AA meetings required to return to work over two weeks in 2018, did not work the twelve steps or obtain a sponsor, and only returned to AA days before the hearing. This pattern of attendance does not demonstrate a serious, sincere effort to recover on the part of the Individual. Even his return to AA just before the hearing was, by his own admission, designed to demonstrate that he was willing to do so, but only if necessary to maintain his clearance. While the Individual indicated that he has an adequate support system, I concur with the DOE Psychologist that this is not the case. While the Individual and his wife are working to repair their relationship, the DOE Psychologist persuasively

opined that the Individual still has work to do in terms of developing insight into the dynamics of their relationship that triggered him to drink and that the Individual would benefit from an outside support system to hold him accountable to abstinence in the future. Since the Individual has not developed such a support system through active AA participation, and his friends and coworkers did not display a substantive understanding of the extent of his drinking, I find that the Individual lacks an effective support system at this time.

The Individual also failed to undergo the PEth testing specified in the Report. This omission implicates all four of the mitigating conditions under Guideline G because, absent this reliable laboratory evidence, I do not have complete confidence in the Individual's abstinence. The Individual's counsel aptly described him as a "closet drinker," and the DOE Psychologist expressed concerns that the Individual was minimizing his alcohol problem out of shame. Tr. at 144–45, 159. The Individual's wife and character witnesses failed to recognize his problematic drinking in the past, and I am not convinced that they would know if the Individual had returned to drinking. I also do not find the tests that the Individual submitted sufficient evidence to demonstrate his abstinence. The interlock device on the Individual's vehicle and the random workplace breath alcohol tests offered by the Individual only show that he had not consumed alcohol shortly before operating his vehicle or reporting to work. These tests are not capable of measuring whether the Individual consumed alcohol alone in the home, as he did on the day of his arrest for DUI, days or weeks before. PEth tests showing that he had not consumed significant quantities of alcohol in the weeks prior to the test, or witness testimony from persons familiar with the severity of his drinking problem, might have established the Individual's abstinence from alcohol. His self-serving testimony and limited test results do not.

Lastly, the Individual's failure to definitively state that he has an alcohol problem, and lack of insight into the triggers that led him to drink, cause me to conclude that the Individual does not meet the mitigating conditions set forth in subparagraphs (a) and (b) of Guideline G. The Individual provided conflicting testimony as to the extent of his alcohol problem, first saying that he did not believe that he had an alcohol problem and then recanting that statement after prompting by his counsel. Moreover, the DOE Psychologist convincingly asserted that the Individual's lack of insight into the triggers that led him to problematic drinking leave him vulnerable to relapse, as had happened in the past, when the Individual was sober for one year, but then began drinking again. For these reasons, I find that the Individual has not acknowledged his pattern of maladaptive alcohol use and that the probability of his returning to problematic drinking casts doubt on his reliability, trustworthiness, and judgment.

The Individual's burden in a Part 710 proceeding is a heavy one, and I must resolve any doubts in the interests of preserving security. *Department of Navy v. Egan*, 484 U.S. at 531. The Individual's failure to follow the DOE Psychologist's recommendations, the DOE Psychologist's testimony as to the Individual's prognosis and likelihood of relapse, and the lack of definitive evidence in support of the Individual's claimed abstinence leave me with too many doubts to conclude that the Individual meets any of the applicable mitigating conditions. Therefore, I find that the Individual has not mitigated the security concerns asserted under Guideline G of the Adjudicative Guidelines.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guideline G of the Adjudicatory Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals