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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: December 27, 2019)	Case No.: PSH-20-0025
)	
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Issued: March 23, 2020

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter of Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and 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), I conclude that the Individual’s access authorization should not be granted.

I. BACKGROUND

The Individual, an applicant for a DOE Security Clearance, signed and submitted a Questionnaire for National Security Positions (QNSP) to the Local Security Office (LSO) on August 1, 2018. Ex. 13. The United States Office of Personnel Management’s (OPM) Investigation Service conducted an investigation of the Individual, and issued a report of its findings (the OPM Report) on January 11, 2019. On February 26, 2019, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 10 at 1. On March 6, 2019, the Individual submitted his response to the LOI (the Response). Ex. 10 at 1. At the LSO’s request, a DOE consulting psychiatrist (the Psychiatrist) conducted a forensic psychiatric evaluation of the Individual on April 11, 2019, and issued his report of his findings (the Psychiatric Report) on April 20, 2019. Ex. 11. After these procedures were concluded, the LSO determined that unresolved derogatory information remained in the Record which raised significant security concerns about the Individual. Accordingly, the LSO

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance

began the present administrative review proceedings on November 18, 2019, by issuing a Notification Letter informing the Individual that the LOS possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge in order to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on December 27, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his Alcoholics Anonymous (AA) Sponsor (the Sponsor), his spouse (the Spouse), his father-in-law (the Father-in-law), and the Psychiatrist. *See* Transcript of Hearing, Case No. PSH-20-0025 (hereinafter cited as “Tr.”). The DOE Counsel submitted fourteen exhibits, marked as Exhibits 1 through 14. (hereinafter cited as “Ex.”). The Individual submitted eight exhibits, marked as Exhibits A through H.

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 Guideline(s) F, 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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Under Guideline F, the LSO alleges that the Individual failed to file his Federal and state tax returns for tax years 2012, 2013, 2014, 2015, and 2016, and that the Individual owes approximately \$9,146 in past due taxes. These allegations adequately justify the LSO’s invocation of Guideline F. Guideline F (Financial Considerations) provides: “failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Guideline F at § 18. Among the conditions that can raise security concerns under Guideline F are an individual’s inability to satisfy debts; an unwillingness to satisfy debts regardless of the ability to do so; a history of not meeting financial obligations; a history of late payments or non-payment, or other negative financial indicators; failure to file annual Federal or state income tax returns, and failure to pay annual Federal or state income tax. Guideline F at § 19(a), (b), (e), and (f).

Under Guideline G (Alcohol Consumption), the LSO alleged that the Psychiatrist concluded that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* criteria for a diagnosis of an Alcohol Use Disorder (AUD). Mild, without adequate evidence of rehabilitation or reformation. The LSO further alleged that the Individual has a history of four alcohol-related arrests, had been placed on a temporary work restriction by his employer because of an alcohol-related incident at work, had violated his employer’s work restriction requiring his

abstention from alcohol use, had been suspended by his employer when his violation of his work restriction had been detected, and had been found by his employer to not be fit for duty after testing positive for alcohol use. These allegations adequately justify the LSO's invocation of Guideline G. 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, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder," "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder," "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder," and "diagnosis by a duly qualified medical or mental health professional (e.g. . . . psychiatrist . . .) of alcohol use disorder. Guideline G at §§ 22(a), (b), (c) and (d).

Under Guideline J (Criminal Conduct), the LSO cites the Individual's history of 14 arrests, and admissions that he purchased and consumed marijuana on a regular basis from 1993 through January 2017. "Criminal activity creates doubts 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. The Individual's extensive history of criminal activity adequately justifies the LSO's invocation of Guideline J.

III. REGULATORY STANDARDS

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all of the relevant evidence, favorable or 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 personal 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 of this case.

IV. FINDINGS OF FACT

The Individual has an extensive criminal record. On October 9, 1992, police arrested and charged the Individual with Unlawful Force on Another Person with the Intent to Injure. Ex. 14 at 99-100. On May 9, 1995, police arrested him after they found two sawed-off shotguns in his possession.² Ex. 14 at 101. In October 1995, police arrested and charged him with Possession of Marijuana. Ex. 14 at 73. On November 3, 1995, police arrested and charged him with Aggravated Driving While Intoxicated (ADWI), Careless Driving, and Driving Without Insurance. Ex. 13 at 35; Ex. 14 at 107. On August 24, 1997, police arrested and charged him with Criminal Damage (under \$1,000) and Public Affray. Ex. 14 at 101. On January 21, 1999, police arrested and charged him with ADWI, Possession of Drug Paraphernalia, Driving On a Suspended License, and Not Driving Within Traffic Lanes. Ex. 14 at 123. On January 23, 1999, police arrested and charged him with Suicide Threat, Battery Against a Household Member, and Domestic Violence. Ex. 14 at 101, 108. On May 20, 1999, police arrested and charged him with Speeding and Revoked License. Ex. 14 at 100, 102-103. On January 20, 2001, police arrested and charged him with Towed Vehicle/Suspended Driver's License. Ex. 14 at 101, 105. On October 15, 2003, police arrested and charged him with Suspended Driver's License. Ex. 14 at 102, 106. On February 19, 2006, police arrested and charged him with Domestic Violence Alcohol Involved, and ADWI. Ex. 14 at 100-101, 123. On November 25, 2006, police arrested and charged him with Domestic Violence, Battery Against a Household Member, and Possession of Marijuana. Ex. 14 at 103, 123. On January 31, 2007, police arrested and charged him with Domestic Violence, Aggravated Assault with a Deadly Weapon and Criminal Damage to Private Property. Ex. 14 at 100, 103-104. Lastly, on May 15, 2018, police arrested and charged him with Negligent Use of a Deadly Weapon (intoxication) and Cruelty to Animals. Ex. 14 at 110.

QNSP

On August 1, 2018, the Individual submitted a QNSP to the LSO. Ex. 13. In the QNSP, the Individual disclosed a number of the criminal offenses discussed above. The Individual further reported that he used marijuana from 1993 until January 2017. Ex. 13 at 40-41. He further disclosed that his marijuana use occurred on a daily basis, and that he had purchased marijuana on a weekly basis from June 1993 until December 2016. Ex. 13 at 40-41. The Individual indicated that he does not intend to use marijuana in the future. Ex. 13 at 41. The Individual also disclosed that he did not file or pay his "Federal, state, or other taxes" for tax years 2013, 2014, 2015, and 2016, estimating that he might owe as much as \$9,146 in back taxes. Ex. 13 at 45-46. The

² While this description of the arrest was provided in the Statement of Charges, the OPM Report indicates that charges resulted from a "bomb threat." Ex. 14 at 99.

Individual attributed his failure to file these tax returns to “negligence.” Ex. 13 at 45. He further stated that he is “talking with an accountant to resolve this matter.” Ex. 13 at 46.

Office of Personnel Management Investigation Report

The OPM completed an investigation of the Individual on January 11, 2019. Ex. 14. During this investigation, an OPM investigator conducted an Enhanced Subject Interview (ESI) of the Individual on September 20, 2018. Ex. 14 at 71. During the ESI, the Individual admitted that he had begun using marijuana when he was 16. Ex. 14 at 76. The Individual further stated that he eventually began using marijuana on a daily basis and had purchased marijuana on a weekly basis. Ex. 14 at 76. The Individual claimed he discontinued using marijuana when he began working for a DOE contractor. Ex. 14 at 76. The Individual also admitted that he had not paid his taxes since 2013, although he claimed that he had paid his taxes in 2017 and applied his refund towards reducing his outstanding tax debt. Ex. 14 at 76. The Individual indicated that he planned to consult with a financial advisor to address his tax debts. Ex. 14 at 76. The Individual attributed his tax debts to negligence and forgetfulness. Ex. 14 at 77.

Incident Reports

On December 5, 2018, the Individual’s employer (the Employer) imposed a temporary work restriction upon the Individual requiring that he abstain from all alcohol consumption. Ex. 9 at 3. However, by December 17, 2018, the Individual self-reported that he had consumed alcohol over the weekend. Ex. 9 at 3. On December 19, 2018, the Employer, after finding that the Individual had failed to comply with the temporary work restrictions it had imposed upon him on December 5, 2018, issued a written reprimand to the Individual, warning him that any further violation of the temporary work restriction requiring him to abstain from all alcohol consumption “may result in further discipline, up to and including termination.” Ex. 9 at 3. The Employer further required that the Individual undergo a Fitness for Duty Evaluation (FDE). Ex. 8 at 4. On December 13, 2018, a psychologist (the Psychologist) employed by the Employer, conducted an FDE of the Individual. Ex.8 at 3. The Psychologist issued a FDE evaluation on December 20, 2018, requiring that the Individual “participate in and successfully complete the designated treatment program, abstain from all alcohol consumption-both at and away from work, and participate in daily testing for alcohol.” Ex. 8 at 6. In late January 2019, while the Individual still had to adhere to the above work restrictions, trace amounts of alcohol were found in the Individual’s urine after a urinalysis, conducted by the Employer. Ex. 7 at 3. As a result, the Individual was “placed on suspension without pay for a period of two weeks (80 hours) beginning January 29, 2019[.]” Ex. 7 at 3. In early April 2019, a breath test was conducted, and the Individual tested positive for alcohol. Ex. 6 at 2.

LOI

The Individual submitted the Response on March 6, 2019. Ex. 10. The LOI required the Individual to explain why he did not file or pay his Federal or state income tax returns for tax years 2012 through 2016. Ex. 10 at 1-4. In his Response, the Individual stated he did not file Federal or state taxes for the years in question because he was “going through a child support dispute with [his] ex-wife and [had been] told by the court that [his] tax refund would be garnished and given [to her to satisfy] back child support.” Ex. 10 at 1. The Individual provided this explanation for the years 2012 through 2014. Ex. 10 at 1-2. For the year 2015, the Individual stated in his LOI that he failed to file taxes that year because he “wanted to see if [he] could get professional help to resolve all [of his] tax issues.” Ex. 10 at 2. The Individual stated that he was seeking professional assistance in an effort to resolve this issue. Ex. 10 at 2.

Psychiatric Assessment

Based on the information gathered during the Investigation, the LSO requested the Individual undergo a psychiatric assessment. The Psychiatrist interviewed the Individual on April 11, 2019, and issued a report of his findings on April 20, 2019.³ Ex. 11 at 1. The Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Mild, and opined that the Individual was not in full sustained remission because he continued to exhibit at least one symptom of AUD: continued occupational impairment. Ex. 11 at 8. Accordingly, the Psychiatrist recommended the Individual successfully complete an Intensive Outpatient Program (IOP), attend aftercare for a total of at least one year, attend AA meetings at least twice weekly, and completely abstain from alcohol use for one year. Ex. 11 at 9.

Individual’s Exhibits

A certificate of completion, dated September 23, 2019, indicates the Individual completed a 37-day program at an inpatient behavioral health facility. Ex. C. A certificate of completion, dated October 22, 2019, provides that the Individual attended and participated in a substance abuse education group. Ex. D. A letter dated February 18, 2020, from a bookkeeping, tax, and payroll service indicates a professional is “currently working on personal income taxes for [the Individual and his spouse]. I expect completion within one week.” Ex. I at 1.

The Hearing

At the Hearing, the Individual, in his opening statement, noted that some of his past behaviors were attributable to his being raised in “a broken home with alcoholic parents.” Tr. at 7. He noted that he lost several important role models during his adolescence. Tr. at 7. The Individual also testified that his involvement in a “volatile marriage” contributed to his behavior. Tr. at 7-8. He testified that he was able to move forward, obtain an education, and establish a career in a trade.

³ The Psychiatrist’s evaluation of the Individual included two laboratory tests, an Ethyl Glucuronide (EtG) urine test, which detects alcohol up to 80 hours after any alcoholic beverage is consumed, and a Phosphatidylethanol (PEth) test, which detects alcohol use during the previous 28 day period. Ex. 11 at 7. The EtG test was negative, but the PEth test was positive. Ex. 11 at 7.

Tr. at 8. The Individual acknowledged that “there are still aspects of my life which are considered disconcerting and questionable,” and that alcohol and drugs had created problems in his life.⁴ Tr. at 8.

The Sponsor testified that he has known the Individual for approximately five months. Tr. at 14. He sees him one to three times a week, and speaks with him by phone three times a week. Tr. at 14. The Sponsor testified that the Individual has been attending AA meetings for approximately six months. Tr. at 15. The Sponsor was unable to recall the Individual’s exact sobriety date, but testified that the Individual had been sober for six months. Tr. at 18-19. He stated that the Individual is “jumping” into the program “fairly quick,” and he is taking his sobriety seriously. Tr. at 19, 21. The Sponsor testified that the Individual was working Step Four of AA’s 12-Step Program. Tr. at 19. The Individual recently began chairing a meeting. Tr. at 19. The Individual admits he is an alcoholic. Tr. at 19. The Sponsor feels confident about the Individual’s sobriety going forward. Tr. at 21. He noted that the Individual’s spouse does not use alcohol. Tr. at 25.

The Father-in-law testified that he has known the Individual since the 1990s, but that the Individual has been married to his daughter for approximately a year and a half. Tr. at 36. The Father-in-law did not have any knowledge of the Individual’s arrests, but did know the Individual had received treatment for his alcohol consumption. Tr. at 38-39. He stated that before the Individual became sober, there was reason to question the Individual’s judgement and reliability, but now, the Individual has a clear mind moving forward and has made “a complete 180.” Tr. at 39, 41-42. The Father-in-law testified that the Individual has been “clean” for six or seven months and “loves being sober.” Tr. at 41-42. The Father-in-law also testified that the Individual has been in attendance at family gatherings and celebrations where other people consumed alcohol, but that the Individual abstained from consuming alcohol, drinking cola or tea instead. Tr. at 46. He was also aware that his son-in-law was attending AA and had received in-patient treatment for an alcohol problem. Tr. at 41. His daughter does not use alcohol. Tr. at 41.

The Spouse testified that she has been married to the Individual since 2017 and that she and the Individual are working with a tax professional to file his Federal and state income tax returns for tax years 2012 through 2016, and to manage their finances going forward. Tr. at 50, 52-53. She testified that, at this point, they do not know if they have any outstanding tax debt. Tr. at 52. The Spouse also testified that although the Individual stated that he owed approximately \$9,000 in taxes, he was merely providing a “rough estimate.” Tr. at 53. The Spouse testified that they expected to complete their tax filing “by the end of this week.” Tr. at 53. The Spouse testified that when he Individual decided that he wanted to stop using alcohol in August 2019, she found a treatment facility for him. Tr. at 60- 61. She testified that he was at the treatment center for 45

⁴ At the hearing, the Individual also made the following request: “I put myself at the mercy of the board and ask only one thing. Rather than ultimately declining my clearance request, postpone the request until a later date and allow me to provide proof of further growth in my life that is not short-lived; but to persevere, endure, and set that proper pace which will allow me to ultimately reach that personal goal of obtaining a security clearance for the DOE.” Tr. at 9. The regulations, however, do not allow me to postpone a request in order to provide an Individual with the opportunity to resolve security concerns. 10 C.F.R. § 710.27(d) (“the Administrative Judge shall render a favorable decision; otherwise, the Administrative Judge shall render an unfavorable decision.”)

days, and he began AA when he came back home. Tr. at 62-63. She and the Individual now attend pastoral counseling together, and attend as many AA meetings as they can together. Tr. at 62. She also attends Al-Anon. Tr. at 63. They no longer have alcohol in their home and that she does not use alcohol. Tr. at 59, 64. She testified that the Individual's sobriety date is August 18, 2019, and that the Individual had been tested for alcohol use on several occasions since then. Tr. at 61-62. As a result of the Individual's sobriety, she has noticed a change in him: "He loves himself." Tr. at 63. The Individual has informed her that he intends to permanently abstain from alcohol use. Tr. at 76. The Spouse attributes her husband's criminal activity to his difficult past, when during his childhood, he lost his father and a beloved uncle, which left him "lost." Tr. at 57, 79. She further testified that the Individual's previous marriage had been volatile. Tr. at 67, 79. The Spouse also testified that the Individual's career is a source of great pride and fulfillment for him. Tr. at 69.

The Individual testified that he has completed his taxes for 2015 and 2016, and that they are ready to be filed, and that the Tax Professional now has the information she needs to complete his other delinquent filings. Tr. at 88, 116-117. He stated that he did not file his taxes for 2012 through 2016 because he felt he had been mistreated by the court system with regard to the child support he owed, and he knew that if he filed taxes, his tax return would be garnished by his ex-wife. Tr. at 86-89. He did not want his ex-wife to receive that money. Tr. at 87.

The Individual did not dispute most of the criminal charges cited in the statement of charges, with the exception of one charge.⁵ Tr. at 91, 94. The Individual testified that a number of the incidents that led to charges during his juvenile years resulted from his need to defend himself. Tr. at 94. He testified that he began a "downward spiral" in 1993, when his father passed away. Tr. at 94. He acknowledged that, after his father's death, criminal behavior "became a pattern in my life." Tr. at 95. The Individual testified that his first marriage, which occurred in 2000, was "volatile," and contributed to his criminal behavior, noting that a number of the charges resulted from incidents involving his first wife. Tr. at 95. The Individual testified that he divorced his first spouse in 2007. Tr. at 85. The Individual further testified that alcohol had contributed to his criminal behavior. Tr. at 95. He testified that he has changed his life since, and that he believes that his past is not an indication of who he is now. Tr. at 119.

The Individual described himself as an "alcoholic." Tr. at 104-105, 120. He testified that he agreed with the Psychiatrist's conclusion that he has AUD, however he believes that his AUD is severe, rather than mild. Tr. at 110. He testified that his spouse found him an inpatient treatment facility which he agreed to attend. Tr. at 107. His treatment there included individual counseling, group counseling, and other activities. Tr. at 107. He attended this facility for 37 days. Tr. at 108. He began participating in AA immediately after completing his inpatient treatment. Tr. at 109. He is currently working on Step Four of AA's 12 Step Program. Tr. at 109. He is also receiving pastoral counseling. Tr. at 109-110. He testified "My intention is to never drink again. But I'm happy to be sober today." Tr. at 109, 111. The Individual testified that he was enrolled in a fitness-for-duty

⁵ The Individual contended that he had not been detained by police after the January 2007 incident which led to him being charged with "felony aggravated assault with a deadly weapon" and "felony criminal damage to private property." Tr. at 92.

program from October first to mid-November 2019 which required that he be tested daily with breathalyzers and weekly with urinalysis. Tr. at 112. The Individual testified he stopped using marijuana when he was working at a DOE facility, because he did not want to be terminated if he was required to take a random drug test. Tr. at 120.

The Psychiatrist testified after observing the testimony of each of the other witnesses. The Psychiatrist testified that he had diagnosed the Individual with AUD, Mild, and Cannabis Use Disorder in Sustained Remission. Tr. at 127. He testified that he was suspicious that the Individual's AUD might be more severe than the "mild" specifier suggests, but he did not have enough evidence to reach that conclusion. Tr. at 127. He noted that the Individual's testimony indicating that he was unable to cut down on his own (which led him to seek treatment) suggests that his AUD might be moderate in severity. Tr. at 128. The Psychiatrist opined that there was inadequate evidence of sustained rehabilitation or reformation. Tr. at 128-129. Noting that he had recommended that the Individual maintain a full year of sobriety, he opined that the Individual did not have "a long enough history of rehabilitation and reform." Tr. at 129. However, the Psychiatrist stated that the Individual has "made an excellent start on his rehabilitation and reform" and had otherwise complied with his treatment recommendations by obtaining treatment and attending AA. Tr. at 129-130. He further noted that the Individual's family support "is a good prognostic factor." Tr. at 130. The Psychiatrist noted that the Individual's prognosis is "good" "if he continues his involvement in AA and continues to have the family support, continues with the lifestyle changes he's made." Tr. at 131. The Psychiatrist also indicated that he believes the chances of the Individual using alcohol in the next six months are low. Tr. at 131.

V. ANALYSIS

Guideline F Concerns

The Adjudicative Guidelines provide that an individual **may** mitigate security concerns under Guideline F if:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; or
- (b) The conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling services, and there are clear indications that the problem is being resolved or is under control;

- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Guideline F at § 20(a)-(g).

The Individual's failure to comply with Federal and state tax law began in April 2013, when his Federal and state tax returns for Tax Year 2012 were due, and has continued into the recent past. Only recently has the Individual begun to address his failure to meet his tax obligations by obtaining the services of a professional tax preparer.⁶ At the time of the hearing, the Individual had not filed any of his delinquent returns, even though he testified that the returns for two of the outstanding tax years had been fully prepared, and his spouse indicated that the other three years of returns would be completed within a week. Since the Individual did not submit evidence showing that he had filed these returns, he has not shown that he had fully resolved the security concerns arising under Guideline F. Accordingly, Guideline § 20(a) does not provide sufficient mitigation to resolve the security concerns raised under Guideline F in this case.

Nor has the Individual shown that the conditions that resulted in his failure to file his tax returns were largely beyond his control, given the Individual's admission that his failure to file the tax returns was motivated by negligence and by a desire to prevent his ex-wife from obtaining any refunds he might receive. It is clear that the Individual did not act responsibly under the circumstances. Accordingly, Guideline § 20(b) does not provide sufficient mitigation to resolve the security concerns raised under Guideline F in this case.

Guidelines § 20(c), (d) and (e) apply to circumstances where an individual is failing to honor financial commitments, rather to those circumstances where an individual has failed to file his tax returns. Accordingly, Guidelines § 20(c) (d) and (e) do not provide sufficient mitigation to resolve the security concerns raised under Guideline F in this case.

Guideline § 20 (f) clearly does not apply in the present case, since it sets forth those factors that can mitigate the security concerns arising from an individual's unexplained wealth.

⁶ Despite his previous assertions that he planned to do so.

There is no evidence in the record indicating that the Individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. At the time of the hearing, the Individual had not filed any of his delinquent returns, even though he testified that the returns for two of the outstanding tax years had been fully prepared, and his spouse indicated that the other three years of returns would be completed within a week. Nor did the Individual submit evidence showing that he had filed these returns after the hearing and prior to the closing of the record. Accordingly, Guideline § 20(g) does not provide sufficient mitigation to resolve the security concerns raised under Guideline F in this case.

Guideline G Concerns

The Adjudicative Guidelines provide that 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.

Guideline G at § 23(a)-(d).

The Individual has begun to take the appropriate actions to mitigate the security concerns related to his alcohol consumption. He has been abstinent from alcohol for approximately six months, starting when he entered an inpatient treatment facility in August 2019. Furthermore, the Individual has been regularly attending and actively participating in AA meetings, meets with his sponsor regularly, is working AA's 12-Step Program, and has the active support of his spouse. The Individual has also taken a leadership role in AA, chairing a meeting on at least one occasion. His Sponsor testified that the Individual has progressed in the AA process at a faster than usual rate. However, I cannot find that these actions, in and of themselves, fully mitigate security concerns arising under Guideline G. Although the Individual has made commendable efforts and is sincere in his assertion that he plans on remaining sober, at the time of the hearing, only six months had passed since his August 18, 2019, sobriety date, six months short of the one-year

period of sobriety that would meet the Psychiatrist's recommendation, and the DSM-5's definition of full sustained remission from his AUD. Accordingly, I find that not enough time has passed for me to conclude that the behaviors attributable to his AUD will not recur, and allow the DOE to rely upon the Individual's reliability, trustworthiness, and judgment. Therefore, I cannot find that Guideline § 23(a) is applicable and as such does not provide sufficient mitigation to resolve the security concerns raised under Guideline G in this case.

The Individual acknowledges his pattern of maladaptive alcohol use, has provided evidence of actions taken to overcome this problem, and has demonstrated a clear pattern of abstinence in accordance with treatment recommendations. However, the Individual has not yet shown that his pattern of abstinence is "established," since he has only been abstinent for six-months, when he needs to abstain from alcohol for a period of 12 months to achieve a full and sustained remission under the DSM-5. Accordingly, I find that Guideline § 23(b) is not applicable as a mitigating factor regarding the Guideline G security concerns raised in this case.

The Individual is participating in counseling or a treatment program, and is making satisfactory progress in a treatment program, however, he has a previous history of treatment and relapse. Ex. 11 at 2-3. Accordingly, I find that Guideline § 23(c) does not provide sufficient mitigation to resolve the security concerns raised under Guideline G in this case.

As referenced above, the Individual has successfully completed a treatment program and is actively participating in AA. He has demonstrated a clear pattern of abstinence. However, he has only abstained from alcohol use for six months, rather than the 12 month period recommended by the Psychiatrist. Nor has the Individual shown that his pattern of abstinence is "established," since he has only been abstinent for only six-months, when he needs to abstain from alcohol for a period of 12 months in order to meet the criteria for a "full and sustained remission" under the DSM-5. Accordingly, I find that Guideline § 23(d) does not provide sufficient mitigation to resolve the security concerns raised under Guideline G in this case.

For these reasons, I find that the Individual has not resolved the Guideline G security concerns raised by the Individual's AUD diagnosis, history of four alcohol-related arrests, placement on a temporary work restriction by his employer because of an alcohol-related incident at work, violation of his employer's work restriction requiring his abstention from alcohol use, suspension by his employer because of his violation of a work restriction, and being found to not be fit for duty after testing positive for alcohol use.

Guideline J Concerns

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32(a)-(d).

Less than two years have passed since the Individual's last involvement in criminal behavior. Since this incident was one of 14 incidents which resulted in his being charged with a crime, it cannot be said to have occurred under unusual circumstances, or that his criminal behavior is unlikely to recur. The circumstances of the Individual's most recent criminal incident, given his extensive criminal record, continues to cast doubt on his reliability, trustworthiness, and judgment. Accordingly, I find that Guideline § 32(a) is not applicable and consequently does not provide mitigation to resolve the security concerns raised under Guideline J in this case.

There is no evidence in the Record indicating that the Individual was pressured or coerced into committing the acts and the Individual does not contend that there was no reliable evidence to support that he did not commit the majority of the offenses cited in the Statement of Charges. Accordingly, I find that Guidelines § 32(b) and §32(c) are inapplicable in this case.

There is some evidence of successful rehabilitation of the Individual with regard to his criminal history. He has learned a trade, established a career, married a supportive spouse, and has begun to undertake a leadership role in AA. In addition, he has begun the process of addressing one of the root causes of his criminal activity, his AUD. However, the Individual's last criminal activity occurred less than two years prior to the hearing. The Individual's extensive criminal record remains a concern. Finally, I note that most of the Individual's criminal activity involves substance abuse (marijuana and alcohol). Because, as I have discussed above, I am not yet sufficiently convinced that the Individual will be able to maintain his sobriety going forward, I am not sufficiently convinced that the Individual is fully rehabilitated to the extent that I can conclude that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that Guideline § 32(d) does not provide mitigation to resolve the security concerns raised under Guideline J in this case. In sum, the Individual has failed to provide sufficient evidence to resolve the Guideline J security concerns raised by his criminal history.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines F, G, and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not mitigated the security concerns raised under each of these Guidelines. Accordingly, the Individual has not demonstrated that granting 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 denied. The parties 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