



The Individual requested a hearing and the LSO forwarded his request to the Office of Hearings and Appeals (OHA), and the Director of OHA appointed me as the Administrative Judge. . At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-20-0032 (hereinafter cited as “Tr.”). The DOE Counsel submitted twelve exhibits, marked as Exhibits 1 through 12. (hereinafter cited as “Ex.”). The Individual submitted three exhibits, marked as Exhibits A through C.

## **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 raised security concerns under Guideline G 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).

Under Guideline G (Alcohol Consumption), the LSO cites the Individual’s July 2018, DUI arrest and the Psychologist’s report as the basis for its conclusion that the Individual was habitually binge consuming alcohol to the point that it could impair his judgement. This report adequately justifies 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, under Guideline G, are “alcohol-related incidents away from work, such as driving while under the influence, . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder,” and “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.” Guideline G at §§ 22(a) and (c).

## **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 (9<sup>th</sup> 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 was charged with a DUI on July 3, 2018. Ex. 5 at 1. A breathalyzer test administered to the Individual at the time of his arrest, on July 2, 2020, indicated that his BAC was .24. Ex. 4 at 1.

##### **Interrogatories**

On December 17, 2018, the Individual signed and submitted a set of interrogatories related to his alcohol use and the July 2, 2018, arrest. Ex. 6. The Individual stated that on the night of his arrest, he consumed approximately twelve to fifteen beers in the span of three to four hours, and had a Blood Alcohol Level of .24 percent. Ex. 6 at 3. The Individual admitted that he was aware of his intoxication when he made the decision to drive. Ex. 6 at 3.

The Individual further reported that he continued to use alcohol, consuming four to eight twelve-ounce beers on a typical Friday or Saturday night. Ex. 6 at 4. The Individual stated that it takes approximately four to six beers before he begins feeling intoxicated and other than the 2018 DUI, he has not had any encounters with law enforcement due to alcohol consumption. Ex. 6 at 5. He also reported that he had completed seven of the ten court-ordered Alcohol Safety Action Program (ASAP) classes. Ex. 6 at 6.

##### **Psychological Evaluation**

Based on the information gathered during the investigation, the LSO requested the Individual undergo a psychological evaluation. The Psychologist interviewed the Individual on September 5, 2019, and issued a report of his findings on September 21, 2019,<sup>2</sup> in which, he opined that the Individual “habitually (frequently) binges on alcohol to the extent that it could cause impairment in his judgment.” Ex. 8 at 8-9. Noting that the Individual continued to engage in binge drinking and excessive alcohol use, the Psychologist concluded that the Individual was not rehabilitated or reformed. Ex. 8 at 9. The Psychologist recommended that the Individual abstain from alcohol for one year, attend Alcoholic Anonymous (AA) meetings for one year, attend an intensive outpatient

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<sup>2</sup> The Psychologist’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. 8 at 6. The EtG and PEth tests were positive. Ex. 8 at 6.

program (IOP), and receive services from the Employee Assistance Program (EAP) in order to achieve reformation or rehabilitation. Ex. 8 at 9.

### **Individual's Exhibits**

A letter dated August 29, 2019, provides that the Individual completed the ASAP program and that he "did not incur any traffic convictions while under supervision [by the ASAP] office." Ex. A at 1. An unofficial driving record indicates the Individual's driving privileges were restored on October 15, 2018. Ex. B at 1.

### **The Hearing**

#### **The Individual's Testimony**

The Individual acknowledged that he had consumed approximately fifteen beers and a malt liquor beverage prior to his July 2, 2018, DUI arrest. Tr. at 27. As a result of his DUI arrest, the court ordered the Individual to attend the ASAP. Tr. at 16. The ASAP required that the Individual attend 10 two-and-a-half hour classes over a ten-week period. Tr. at 16-17. A breathalyzer was administered at the start of every class. Tr. at 16-17. None of the breathalyzer tests administered to the Individual by the ASAP detected alcohol use. Tr. at 35. The court further ordered the installation of an interlock system in the Individual's vehicle. Tr. at 17. The Individual's interlock device never detected alcohol on his breath. Tr. at 17-18. The Individual testified that while he did not consume alcohol prior to driving while the interlock system was installed in his vehicle, he continued to consume alcohol during this period. Tr. at 29-30. The Individual admitted that he resumed consuming alcohol after completing the ASAP,<sup>3</sup> but is now "much less of a drinker," limiting his consumption to "a few beers with friends." Tr. at 18-19. The Individual testified that, prior to his arrest, he did not realize he was engaging in binge drinking. Tr. at 20-21. He stated "I have changed considerably how much I drink." Tr. at 21. He no longer consumes enough alcohol to become intoxicated. Tr. at 22, 36. The Individual testified that he believes he now has control over his alcohol use, noting that he had been able to abstain from alcohol use for a six month period.<sup>4</sup> Tr. at 23-24. The Individual admitted that he has not attended any additional counseling, AA meetings, or any other support group meetings. Tr. at 32-33. Although he claimed he had "looked for local AA meetings." Tr. at 33. He further admitted that he has not attended any outpatient treatment, or sought assistance from his EAP. Tr. at 34. Other than breathalyzer tests, the Individual had not taken any tests meant to detect alcohol in his system since the EtG and PEth tests were performed. Tr. at 35. The Individual has, however, changed his peer group and expressed a willingness to discontinue alcohol use. Tr. at 36-37, 39-40, 41.

#### **The Psychologist's Testimony**

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<sup>3</sup> On cross-examination, the Individual admitted that he had consumed approximately six beers on December 15, 2018, while he was attending the ASAP. Tr. at 29-30.

<sup>4</sup> The Individual subsequently testified that "I went sober for a good amount of time, but I can't tell you an exact time limit -- time." Tr. at 28.

The Psychologist testified that he did not assign a formal diagnosis of alcohol use disorder (AUD) to the Individual, but that after he received the Individual's test results and obtained the Individual's alcohol use history, he concluded that the Individual engages in binge drinking, and habitually exceeds the government standards for heavy drinking. Tr. at 53-59. The Psychologist further opined that when someone's alcohol use results in legal issues, then he "would ideally want to see a really stringent response" in terms of treatment. Tr. at 60, 72. Accordingly, he recommended the Individual abstain from all alcohol use for twelve months, participate in a group like AA, participate in an IOP, and become involved with his EAP, in order to be regularly tested. Tr. at 61-62. The Psychologist testified that "based on what I am hearing today, it sounds like there is genuine improvement in terms of reducing consumption. So I feel fairly optimistic about that." Tr. at 75. However, he further testified "I would be much more optimistic if there had been some sort of intervention or a period of abstinence." Tr. at 75.

## V. ANALYSIS

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 security concerns related to his alcohol consumption. He has successfully completed the ASAP, and testified that he has disassociated himself from his former drinking buddies. However, the Individual continues to consume alcohol, contrary to the recommendation of the Psychologist in September 2019. While the Individual testified to having reduced his alcohol consumption, the only evidence in the record supporting this assertion is his own testimony.<sup>5</sup> Furthermore, contrary to the recommendations

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<sup>5</sup> The Individual's testimony that he has disassociated himself from his former friends with whom he would consume alcohol also remains uncorroborated in the Record.

made by the Psychologist, the Individual has not sought any treatment, he is not attending AA or similar meetings, and he is not utilizing his EAP. Accordingly, he does not have any system of external accountability in place. The Individual also testified that he continued to use alcohol while the interlock device was on his car and admitted that he had not made any attempts to search for an AA or similar program. These facts strongly suggest that the Individual has poor or questionable judgement when it comes to his alcohol consumption. Despite the fact he may have reduced his alcohol use, he is still consuming alcohol. Therefore, I cannot find that Guideline § 23(a) provides sufficient mitigation to resolve the security concerns raised under Guideline G in this case.

The Individual acknowledged his pattern of maladaptive alcohol use during his testimony, and he testified to having reduced the amount of alcohol he currently consumes. However, the Individual has not yet shown that his pattern of modified alcohol consumption is “established,” since he modified his consumption less than one year ago and has not provided any test results, or any other evidence that can corroborate this claim. Accordingly, I find that Guideline § 23(b) is not applicable as a mitigating factor regarding the Guideline G security concerns raised in this case.

As the Individual is not participating in counseling or a treatment program, Guideline § 23(c) is not applicable. Further, Guideline § 23(d) is not applicable as the Individual has not participated in a treatment program<sup>6</sup> and shown a pattern of modified alcohol consumption in accordance with treatment recommendations.

## VI. CONCLUSION

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For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. 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 Guideline G. Accordingly, the Individual has not 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 not be restored. 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

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<sup>6</sup> The ASAP does not qualify as a treatment program. Tr. at 63.