

On April 1, 2020, the Individual submitted to another random BAT, resulting in a BAC of 0.028. Ex. 5 at 1. The Individual admitted that he had consumed four mixed vodka drinks between the hours of 7:00 pm and 9:00 pm the prior evening. Ex. 5 at 1; Ex. 8 at 3. The Individual was referred to a substance abuse professional (SAP) for an assessment, which resulted in a June 4, 2020 report. Ex. 10. In the same fashion as before, the Individual was told to comply with several conditions relating to his use of alcohol. Ex. 10 at 3. The LSO also requested that the Individual be evaluated by a DOE-Contractor Psychiatrist (DOE Psychiatrist), who subsequently issued a report of his findings (Report) on August 18, 2020. Ex. 8. After receiving the DOE Psychiatrist's report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that his security clearance had been suspended and that he was entitled to a hearing before and Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of two other witnesses, along with twenty-five exhibits, marked as Exhibits A through Y (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0050 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted fourteen exhibits marked as Exhibits 1 through 14.

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 G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition...or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder." *Id.* at ¶¶ 22(a), (c)-(d).

With respect to Guideline G, the LSO alleged that (1) the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, without adequate evidence of rehabilitation or reformation, and further concluded that the Individual's AUD "causes, or may cause, a significant defect in judgement or reliability[;]" (2) random BAT results on April 1, 2020, indicated blood alcohol levels of 0.029 and 0.028, and the Individual admitted that the night before, he had consumed four mixed drinks, each containing two shots of vodka; (3) random BAT results on January 27 2017, registered a BAC of 0.06, and during a subsequent interview, the Individual admitted that he had consumed approximately five sixteen-ounce beers in addition to smaller beer

samples between the hours of 7:20 pm and midnight the previous evening. Ex. 1 at 1. For these reasons, I find that LSO properly invoked Guideline G of the Adjudicative Guidelines.

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) (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

A Personnel Security Specialist (Specialist) interviewed the Individual on March 9, 2019. Ex. 12 at 2. The Individual confirmed that he tested positive for alcohol in a random breathalyzer test on January 27, 2017. Ex. 12 at 9. He stated that on the 26th, he began consuming alcohol between 7:20 pm and 7:40 pm, drinking approximately five sixteen-ounce beers, as well as smaller “tasters,” over the span of approximately five hours. Ex. 12 at 10-12. Other than taking an additional sip of beer in the early morning hours of the 27th, the Individual denied consuming any more alcohol prior to reporting to work on the 27th. Ex. 12 at 12-13. The Individual informed the Specialist that he is precluded from consuming alcohol “within eight hours of working,” and if he is randomly chosen for a breathalyzer test, he must register below 0.02. Ex. 12 at 15. On January 27th, the Individual registered a 0.06, and as a result, was required to undergo various screenings, interviews, and educational classes. Ex. 12 at 16-23. The Individual denied having ever consumed alcohol within eight hours prior to reporting to duty before the January 27th incident. Ex. 12 at 25. As requested, the Individual attended five education classes, which he completed in February 2017, was reprimanded for the incident, and was subject to further testing. Ex. 8 at 4.

On April 1, 2020, a random BAT was administered to the Individual, which registered a blood alcohol level of 0.029, with a confirmatory test registering at 0.028. Ex. 14. The Individual underwent two assessments with an SAP, the first on April 6, 2020, and a follow-up on June 3, 2020. Ex. 10 at 3-4. In a June 4, 2020, report following the second assessment, the SAP took note

of the Individual's admission that his alcohol consumption had increased over the previous four months, and that on his days off, he would begin "consuming alcohol 'around 8:00 pm or 9:00 pm, and would continue until around 1:00 am[.]'" Ex. 10 at 2. The SAP stated that in the prior assessment of April 6, 2020, it was determined that the Individual has a high probability of substance use disorder and he was diagnosed with Alcohol Use Disorder, Mild. Ex. 10 at 2. The April 6, 2020, recommendations included individual counseling, and twenty-five hours of counseling and education, inclusive of participation in a program like Alcoholics Anonymous (AA). The Individual consented to participate in AA, counseling, education courses, and a follow-up assessment. Ex. 10 at 3-4. In the June 3, 2020, follow-up assessment, the substance abuse counselor found that the Individual "had successfully complied with...recommendations as required by the DOE." Ex. 10 at 4.

The Individual was evaluated by the DOE Psychiatrist on August 10, 2020, and a subsequent report was completed on August 18, 2020. Ex. 8.² The Report provided that the Individual stated that he last used alcohol the night before the April 1, 2020, random test, and that he had completed thirty hours of AA meetings. Ex. 8 at 5. The Individual identified his heaviest period of drinking as having taken place prior to his second violation. Ex. 8 at 6. The Individual was diagnosed with AUD, Moderate, without evidence of rehabilitation or reformation. Ex. 8 at 10. The DOE Psychiatrist recommended twelve months of sobriety and "participation in a [twelve]-step or similar" program. Ex. 8 at 10. The DOE Psychiatrist also concluded that the Individual's AUD diagnosis "can impair his judgement, stability, reliability, or trustworthiness[.]" Ex. 8 at 10.

V. Individual's Exhibits

The Individual submitted a report from his therapist (Individual's Therapist) which indicated that the Individual had been receiving therapy since December 3, 2020. Ex. A at 1. The Individual's Therapist opined that the Individual "did meet criteria for [AUD] in the past[.]" but that he had remained abstinent for more than a year, and had participated in eight counseling sessions. Ex. A at 1-2. He also stated that the Individual "does not have an emotional, mental, or personality condition that impairs his judgment[.]" and offered an excellent prognosis. Ex. A at 2.

The Individual also submitted his AA attendance logs from April 11, 2020 to May 25, 2021, documenting sixty-five meetings attended. Ex. J; Ex. U. The Individual also submitted evidence that he had attended six Employee Assistance Program (EAP) sessions from April 2020 to May 2020, and that no additional treatment recommendations had been made. Ex. W at 1. The Individual also completed a four-hour alcohol awareness online course on April 20, 2020, for which he submitted a certificate of completion. Ex. Y.

² In conjunction with the examination, two laboratory tests were performed, a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test. Ex. 8 at 9. The PEth test was negative, indicating the Individual "had not been drinking on a regular, heavy basis within a few weeks of the test, and has not had binge episodes or moderate drinking within about a week of the test." Ex. 8 at 9. The EtG was also negative, which indicated that Individual had not consumed alcohol within three days prior to the collection of the sample. Ex. 8 at 9.

Additionally, the Individual entered into the record two negative EtG tests, one of which was a hair test, from December 10, 2020, as well as negative BATs from November 17, 2020 and January 28, 2021. Ex. K; Ex. L; Ex. M; Ex. N. The Individual's exhibits also included negative PEth tests from January 28, 2021, March 4, 2021, and April 8, 2021. Ex. O; Ex. P; Ex. Q. The Individual also submitted multiple negative randomized, workplace BATs and drug tests ranging from September 2013 through November 2020, save for the positive BATs on January 27, 2017 and April 1, 2020. Ex. V.

VI. Hearing Testimony

The Individual's coworker, a clearance holder and employee of 37 years who has known the Individual since approximately 2007 or 2008, testified that he never observed seeing the Individual under the influence of alcohol or smelled alcohol on the Individual. Tr. at 9. He also stated that he finds the Individual trustworthy, stating "[h]e's gained my trust in a tremendous way." Tr. at 11. After providing that the Individual had explained the situation behind these proceedings to him, the witness also expressed his belief that the Individual has support and understanding among his colleagues. Tr. at 11-12, 15-16.

The Individual's Therapist testified that he first saw the Individual in a therapeutic capacity in December 2020 and has had nine sessions with him thus far. Tr. at 18. Based on the information the Individual provided, the Individual's Therapist felt that Acceptance and Commitment Therapy (ACT) would be most appropriate for the situation. Tr. at 19. This approach does not involve any diagnoses, instead focusing on "building a life you love[.]" Tr. at 20, 22. Although the Individual's Therapist did not diagnose the Individual, he did receive paperwork from the Individual that indicates the Individual was diagnosed with AUD, which the Individual's Therapist accepted. Tr. 22-23. However, the Individual's Therapist opined that, as the Individual has been abstinent for over a year, he does not "meet criteria right now for an alcohol use disorder[.]" Tr. at 23.³ The Individual's Therapist noted that he believes therapy is working for the Individual, in that the Individual is using what he has learned in therapy to make decisions, as well as to deal with stress, without using alcohol by focusing on what is important to him. Tr. at 26-30, 34-36, 38-39.⁴ Because of the skills the Individual has acquired, the Individual is "willing to endure something uncomfortable like anxiety and do the task without needing alcohol to cope with it." Tr. at 30. The Individual's Therapist also noted that he believes it is significant that the Individual shared with his friends his desire to remain sober, as it has garnered him support. Tr. at 30. He opined that as

³ The Individual's Therapist acknowledged that he had not administered any alcohol tests to the Individual. Tr. at 45.

⁴ The Individual's Therapist provided an example in which the Individual gathered with friends with whom he would previously consume alcohol, as they had assembled in remembrance of a deceased friend. Tr. at 27. The Individual chose to focus on the relationships he had formed with the decedent and those in attendance. Tr. at 28. The Individual, as a result, did not experience craving or urges to consume alcohol. Tr. at 28. The Individual also recounted several social situations where he refrained from consuming alcohol, although others around him did partake, stating "the experience makes me better without it." Tr. at 59-61.

long as the Individual continues to practice his newfound skills, his prognosis is good to excellent. Tr. at 31, 44.⁵

The Individual began his testimony by stating that he has been abstinent from alcohol since April 1, 2020. Tr. at 47. He stated that he “[did not] have to have somebody tell [him] not to drink[,]” as “[he] knew then that that was done.” Tr. at 55. He further testified that he followed all of the recommendations made by the SAP following the April 1st incident, which consisted of a four-hour online educational class, six individual counseling sessions, and sixteen hours of AA or a similar program. Tr. at 47-48. Although he completed the recommended sixteen hours of AA, he continues to attend meetings and participates when he can. Tr. at 48.⁶ The Individual currently tries to attend at least one meeting per week. Tr. at 52-53. Since returning to work, the Individual has taken several tests screening for alcohol and signed a “last chance agreement,” indicating that his employer will not tolerate a positive alcohol test. Tr. at 50-52. The Individual also stated that he has no “desire for alcohol at all.” Tr. at 56. He stated that he recognized that alcohol has no part to play in the life he wants to live, and he understands that alcohol caused him problems in the past. Tr. at 57. The Individual testified that he enjoys support not only among his colleagues, but among his friends and family, as well. Tr. at 59, 66-67.

The DOE Psychiatrist testified that he was impressed by the Individual’s determination at their first meeting in August of 2020, and was encouraged by the Individual’s four-month sobriety at that time. Tr. at 72, 74. The DOE Psychologist testified that, although the Individual continues to carry the AUD diagnosis, he is now in sustained remission. Tr. at 73. The DOE Psychologist also opined that the Individual has shown adequate reformation and rehabilitation. Tr. at 74. He further opined that, as long as the Individual remains mindful, his prognosis is good. Tr. at 75.

VII. Analysis

The Individual’s alcohol related incidents at work and a diagnosis of AUD all raise security concerns under Guideline G of the Adjudicative Guideline. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “the individual acknowledges his or her pattern of maladaptive use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established patterns of modified consumption or abstinence in accordance with treatment recommendations.” Guideline G at ¶ 3(b).

The record reflects that the Individual has recognized his maladaptive alcohol use and has taken substantive steps toward mitigating Guideline G concerns. Although it would have been ideal for the Individual to recognize his maladaptive alcohol use the first time he tested positive for alcohol when a random BAT was administered, he did come to this important realization immediately after the second BAT was administered in April 2020, resulting in approximately four months of sobriety by the time he was evaluated by the DOE Psychiatrist. Tr. at 47, 72-74. Not only was he diligent in beginning his journey into sobriety, he was diligent in fulfilling all requirements

⁵ The Individual’s Therapist also took note of the fact that the Individual has completed independent research and reading regarding the matter of recovery. Tr. at 31-32, 53-55; Ex. R; Ex. T.

⁶ Due to the pandemic, the Individual began his foray into AA by attending virtual meetings and continues to attend these virtual meetings. Tr. at 48-49. He also admitted that he has not engaged a sponsor. Tr. at 68.

established by the SAP and the DOE Psychiatrist, and he engaged the services of a therapist. Ex. 10 at 4; Ex. A; Ex. W; Ex. Y. The Individual was able to offer evidence of hours of AA meetings and therapy, participation in his company's EAP, the completion of an online educational course, as well as multiple negative screenings for alcohol to corroborate his testimony. Ex. 8 at 9; Ex. J; Ex. K; Ex. L; Ex. M; Ex. N; Ex. O; Ex. P; Ex. Q; Ex. U; Ex. V; Ex. W; Ex. Y.

By the Individual's own credible testimony, which is strongly corroborated by other evidence in the record, he has remained sober since April 1, 2020, and has incorporated the tools he needs to remain sober seamlessly into his life. Importantly, the DOE Psychiatrist not only noted that the Individual is in sustained remission, but that he has achieved adequate rehabilitation and reformation. Tr. at 73-74.

The sweeping actions that the Individual took to address the consequences of his alcohol misuse, his ongoing abstinence since April 1, 2020, as well as expert opinion that the Individual has been rehabilitated from his AUD diagnosis, have mitigated the security concerns raised in the Notification Letter, pursuant to Guideline G at ¶ 3(b).

VIII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all of the evidence, both favorable and unfavorable, in a comprehensive, common sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals