

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 six other witnesses, along with seven exhibits, marked as Exhibits A through G (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-20-0038 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted ten exhibits marked as Exhibits one through ten.

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 away from work, such as driving while under the influence, . . . regardless of the frequency of the individual's alcohol use[.]" "habitual or binge consumption of alcohol to the point of impaired judgment[.]" 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 Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate; (2) the Individual consumed an average of five to eight beers on a daily basis from 1993 to 2018; and (3) the Individual has a history of involvement with law enforcement in the 1990s as a result of alcohol consumption. Ex. 1 at 1. In light of these facts, the LSO's invocation of security concerns under Guideline G is justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (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

The Individual does not challenge the basic facts listed in the Notification Letter; namely that, in 1990, he was arrested for destruction of private property while intoxicated, and in 1991, he was charged with underage possession of alcohol. Ex. 10 at 53–54. In an LOI signed and dated March 6, 2019, the Individual estimated that he would drink approximately four to six alcoholic beverages per day prior to seeking treatment on November 2, 2018, and the last time he consumed alcohol was in December 2019. Ex. 7 at 2.

In November 2018, the Individual self-reported that he enrolled in an outpatient treatment program, as he had been consuming alcohol daily for “most of [his] life.” Ex. 6 at 1. The Individual stated that he had been honest with all interested parties, including investigators, regarding his alcohol consumption, and he was seeking treatment with his health in mind. *Id.* The Individual first participated in the Chemical Dependency Recovery Program (CDRP), and upon completion, he began attending a twelve-week Early Recovery Program (ERP) on April 9, 2020. Ex. F at 1. The Individual’s primary ERP therapist noted his regular attendance and appropriate participation “marked by a healthy openness and honesty.” Ex. F at 1. Further, the Individual has been attending individual therapy “weekly or bi-weekly, as the therapist’s schedule would allow, beginning [March 19, 2020].” Ex. F at 1.

Based on the information gathered, the LSO requested that the Individual undergo a psychological evaluation. The DOE Psychologist interviewed the Individual and issued the Report on May 24, 2019. During the evaluation, the Individual informed the DOE Psychologist that he began drinking daily in his twenties, and when he reached middle age, his daily alcohol consumption increased. Ex. 8 at 4. The Individual sought treatment for his alcohol use after he became aware of the effect it was having on his health. *Id.* Accordingly, the Individual sought treatment at an intensive outpatient program (IOP), where he received alcohol education, group therapy, and care from a physician. *Id.* Although the DOE Psychologist recommended participation in the Alcoholics Anonymous (AA) program, the Individual told the DOE Psychologist that he has not had the time to attend such meetings, despite his interest. *Id.* at 5. The Individual also stated that since November 2018, he had consumed alcohol on only three occasions, and further, the last time he consumed alcohol was approximately three weeks prior to his evaluation with the DOE Psychologist. *Id.* Although his alcohol consumption did not result in any involvement with law enforcement, save for the encounters in his twenties, the Individual did tell the DOE Psychologist that “he drove while intoxicated on approximately twenty occasions.” *Id.*

The DOE Psychologist’s evaluation of the Individual included two laboratory tests, an Ethyl Glucuronide (EtG) and a Phosphatidylethanol (PEth) test, both of which were positive. *Id.*² The

² The EtG urine test, which detects alcohol up to 80 hours after any alcoholic beverage is consumed, and a PEth test, which detects alcohol use during the previous 28-day period.

DOE Psychologist noted that the test results were inconsistent with the Individual's report that he had consumed alcohol three weeks prior to the evaluation, finding that the Individual was likely not only consuming more alcohol than reported, but also more recently than reported. *Id.* at 6. The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, and stated that there was no evidence of reformation based on the laboratory findings and the Individual's "willing[ness] to hide his drinking." *Id.* at 6-7.

The Individual opted to undergo a Substance Abuse Evaluation in January 2020, which was conducted by an expert of his own choosing (Individual's Expert). The Individual's Expert subsequently issued an October 13, 2020, memorandum (the Memorandum), in which he stated that he found the Individual to be "forthright and credible[]" and noted that the Individual's work performance was unaffected during the period of the Individual's alcohol use. Ex. A at 1-2. Further noted in the Memorandum was the Individual's continued abstinence in the face of a pandemic, his continued participation in AA meetings, and his consistently negative alcohol tests. Ex. A at 2; Ex. B at 1-10. An AA attendance log indicates the Individual began attending AA meetings on a regular basis on March 2, 2020. Ex. C at 1-7.

V. Hearing Testimony

At the hearing, two of the Individual's professional colleagues testified to the Individual's reputation as a reliable, credible, and "well-respected" professional in his field. Tr. at 21, 24-25, 29, 35-36. One witness testified that he does not have any concerns over the possibility that the Individual may be a security risk, and both witnesses denied having observed any negative effects alcohol may have had on the Individual's work performance. Tr. at 29-31, 33, 37. One witness stated that he had become privy to information regarding the Individual's rehabilitation efforts, which includes attending a program and removing himself from situations where alcohol is typically consumed. Tr. at 40-41.

Another witness testified that, before the onset of the pandemic, he would hold a monthly game night, which the Individual regularly attended. Tr. at 49. The witness went on to note that the Individual had not attended a game night since September 2018, in an effort to avoid environments in which alcohol is consumed. Tr. at 51. The witness also stated that he visited the Individual's home on occasion, and he did not see the Individual consume alcohol on those visits. Tr. at 53.

The Individual's Expert, who acted as a consultant for the purpose of establishing a basic treatment plan, testified that he advised the Individual against controlled drinking and implemented a program using a medical model to address the conditions that trigger the Individual to drink alcohol. Tr. at 60-61, 62. The Individual's Expert stated that the Individual has removed himself from triggering situations, and he is able to confirm the Individual's continued abstinence through laboratory testing. Tr. at 61. The Individual's Expert stated that he communicated regularly with the Individual, assisted the Individual by addressing treatment for a co-occurring condition, and advocated that the Individual adopt an exercise program. He noted that the Individual has remained sober despite the stress of the pandemic. Tr. at 64-66. The Individual's Expert stated that the

Individual has remained “compliant with the elements of a recovery program and [is] actually doing very well.” Tr. at 67. He also testified that the Individual has developed a “sophisticated recognition of the things that he needs to keep doing[,]” in that the Individual not only has the specific tools to avoid relapse, but can also reinstate abstinence in the event of a relapse. Tr. at 72-73, 78-79. On cross-examination, the Individual’s Expert testified that he believes the Individual began a true period of abstinence at the beginning of March 2020, and he feels the Individual is rehabilitated or reformed from his alcohol use disorder. Tr. at 76, 91.

The Individual’s wife testified that the Individual’s health was the primary impetus for his rehabilitation; he enrolled in the CDRP shortly after receiving the news about his health; and he initially began the process by reducing his alcohol consumption by half, followed by intermittent periods of abstinence. Tr. at 96-98. She stated that, to the best of her knowledge, the Individual’s last drink was “around Christmastime” of 2019. Tr. at 101. The Individual’s wife began abstaining from alcohol along with the Individual; they have removed alcohol from the home; they both receive counseling; and they avoid triggering situations. Tr. at 101-04.

The Individual’s AA sponsor testified that he first met the Individual in February 2020, and he became the Individual’s sponsor at the end of the same month. Tr. at 120. The witness stated that despite the ongoing pandemic, the Individual has continued to participate in AA meetings and engages in routine telephone contact. Tr. at 121-22. The Individual’s AA participation has been marked by proactive participation, an eagerness to progress through the twelve steps of the program, and an “earnest desire to change his life.” Tr. at 123-24. Further, he has no reason to believe that the Individual has resumed drinking at any point during the sponsorship and is confident the Individual’s sobriety will endure. Tr. at 126-31, 133. The witness confirmed that the Individual has completed the twelve steps and, in his sponsor’s estimation, is ready to serve as a sponsor to others. Tr. at 131-32, 136.

The Individual testified that he first received his clearance in 2004, and that he has never tested positive for either alcohol or illicit substances at work. Tr. at 147. The Individual self-reported when he began treatment for alcohol consumption. Tr. at 147-48. He testified that reading through the DOE Psychologist’s report “brought [him] to [his] knees,” as he did not believe his alcohol consumption was problematic. Tr. at 151-52. He sought treatment not only to bring his health issues under control, but also because he felt that he was setting a poor example for his children. *Id.* at 152. He initially tried to reduce his alcohol consumption, but later understood that this approach was a not a long-term solution; accordingly, he had his last drink on December 22, 2019. Tr. at 152-53. He stated that after receiving the DOE Psychologist’s report, he sought out the assistance of an addiction specialist, who not only agreed with the DOE Psychologist’s assessment, but formulated a recovery plan for the Individual. Tr. at 156-57. These recovery guidelines include regular therapy and exercise, taking medication as prescribed, avoiding places and situations that would involve alcohol use, attending a support program like AA, and extending plans for sobriety to the Individual’s wife. Tr. at 157-58. The Individual initially provided urine samples to test for alcohol, but he began submitting hair samples after the start of the pandemic, all of which were negative. Tr. at 159-60. At the time of the hearing, the Individual had been attending ERP, which

is a group therapy program, once a week. Tr. at 160. However, he intends to move on to another program scheduled to begin the week after the hearing. Tr. at 160, 173. The Individual began attending AA meetings in early March 2020 and believes they have been helpful to his sobriety. Tr. at 162-63. He testified that since the beginning of his sobriety, he has experienced triggers that would otherwise cause him to drink, but he has successfully employed techniques to cope with these occurrences. Tr. at 171.

After listening to the entirety of the hearing, the DOE Psychologist testified that, based on the testimony and the exhibits, he believes there is adequate evidence of rehabilitation or reformation. Tr. at 180-81. To support this assertion, the DOE Psychologist cited the ongoing laboratory testing, “behavioral evidence and evidence from differing perspectives such as the medical perspective,” “along with [the Individual’s] participation in different aspects of alcohol treatment programs.” Tr. at 181. Despite the fact that the Individual had not yet achieved a full twelve months of sobriety at the time of the hearing, as was recommended, the DOE Psychologist found that there was sufficient evidence to support his conclusion because the Individual understands that he has a problem with alcohol and continues to remain abstinent. Tr. at 181. He concluded his testimony by stating that he believes the Individual’s risk of relapse is low and that his prognosis is good. Tr. at 182.

VI. Analysis

The Individual’s alcohol-related incidents away from work, habitual consumption of alcohol to the point of impaired judgement, and diagnosis of AUD all raise security concerns under Guideline G of the Adjudicative Guidelines. 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 patters of modified consumption or abstinence in accordance with treatment recommendations.” Guideline G at ¶ 23(b).

The record provides that the Individual has recognized his maladaptive alcohol use and has taken commendable steps toward mitigating Guideline G concerns. After confronting the potential negative health effects that would come with continued alcohol consumption and the unpalatable truths in the DOE Psychologist’s Report, the Individual voluntarily enrolled in an outpatient treatment program and sought out the assistance of an expert in the discipline of addiction to establish a strategy for sobriety, which includes ongoing laboratory testing. Tr. at 96-98, 151-53, 156-57; Ex. A at 2. Importantly, the laboratory testing has provided objective proof of the Individual’s continued sobriety. Ex. B at 1-10. Witness testimony and the documentary evidence show that the Individual receives regular therapy; he attends regular AA meetings; and further, he enjoys strong support from a spouse who has endeavored to remain abstinent from alcohol as well. Tr. at 101-04, 120-122, 160, 173; Ex. C at 1-7; Ex. F at 1. Understanding the danger that potential triggers pose, the Individual has kept his distance from circumstances and environments where alcohol could be present, and by his own credible testimony, has remained abstinent since December 22, 2019. Tr. at 40-41, 53, 101-41, 152-53. The Individual’s testimony regarding these encompassing lifestyle changes ring especially true as multiple witnesses have confirmed these assertions.

Most compelling, both the Individual's Expert and the DOE Psychologist testified that they believe the Individual has been successfully reformed or rehabilitated, a marked shift from the assessments made in the DOE Psychologist's Report. Tr. at 91, 180-81 The Individual's Expert testified to his confidence that the Individual has the tools to successfully resist the temptation to drink and has the ability to reassert his abstinence if he ever did consume alcohol. Further, the DOE Psychologist testified that the probability that the Individual will relapse is low. Tr. at 91, 182.

The Individual's recognition of his maladaptive alcohol use, the sweeping actions he took to overcome the issue, and his ongoing abstinence, as well as the expert opinions that the Individual has been rehabilitated from his AUD diagnosis, have mitigated the security concerns raised in the Notification Letter pursuant to the Adjudicative Guideline at ¶ 23(b).

VII. 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 Summary of Security Concerns. 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