

Because of the Individual's history of three alcohol-related arrests, the LSO requested that he undergo an evaluation by a DOE-contracted Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on April 22, 2021. Ex. 9 at 2. In addition to interviewing the Individual, the Psychologist reviewed the Individual's personnel security file, and provided for the administration of three tests to the Individual: the Minnesota Multiphasic Personality Inventory (MMPI) (a standardized psychological assessment); the Ethyl Glucuronide (EtG) urine test (which detects alcohol consumption up to 80 hours prior to the test); and a Phosphatidylethanol (PEth) blood test (which detects alcohol use during the previous 28-days).⁴ Ex. 9 at 2-7.

The Psychologist issued a report of her findings (the Report) on May 6, 2021, in which she concluded that the Individual meet the criteria for Alcohol Use Disorder, Moderate (AUD) set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5). Ex. 9 at 4, 7. In support of this conclusion, the Psychologist cited the Individual's admission during the evaluation that he had developed a tolerance to alcohol, evidence that he was consuming larger amounts of alcohol than intended, and evidence that he was using alcohol despite negative social consequences. Ex. 9 at 4-5. She further concluded that the Individual had shown neither reform nor rehabilitation from his AUD. Ex. 9 at 7. The Psychologist recommended that the Individual "demonstrate 12 months of controlling his use of alcohol by not drinking to excess." Ex. 9 at 7. She further recommended that the Individual "actively participate in a chemical dependency rehabilitation program showing attendance at least three times a week for at least 12 months." Ex. 9 at 7.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he would not be granted a security clearance and was entitled to a hearing before an Administrative Judge 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), I took testimony from two witnesses: the Individual and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0020 (hereinafter cited as "Tr."). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14 (hereinafter cited as "Ex."). The Individual submitted five exhibits, marked as Exhibits A through E.

The Individual has submitted the records generated by his attendance of a court-mandated alcohol education program (AEP). Ex. A at 2. Ex. A indicates that, on March 9, 2021, an AEP counselor believed that the Individual "appears to be social drinker with no manifestations of over-

⁴ The EtG test results were negative, indicating that the Individual had not consumed alcohol for the past several days. Ex. 9 at 20. The PEth test was positive at 111 ng/ml. Ex. 9 at 20. The laboratory report indicates that "PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption," but cautioned that "the Center for Substance Abuse Treatment (CSAT) advises caution in interpretation and use of biomarkers alone to assess alcohol use. Results should be interpreted in the context of all available clinical and behavioral information." Ex. 9 at 21. A DOE Psychiatrist interpreting the laboratory report on behalf of the Psychologist claimed that "[t]his PEth level is congruent with significant alcohol consumption." Ex. 9 at 20.

involvement with alcohol.” Ex. A at 1. Ex. A further indicates that the Individual successfully completed the AEP on July 27, 2021. Ex. A at 2-3.

The Individual has also submitted laboratory reports indicating that the Individual had taken PEth tests on August 19, 2021; September 17, 2021; October 22, 2021; November 19, 2021; January 3, 2022; January 28, 2022; and March 1, 2022. Ex. B; Ex. E. These laboratory reports indicate that the Individual tested positive for alcohol use on August 19, 2021, and tested negative on the other six PEth tests. Ex. B; Ex E.

The Individual submitted several written statements. The first written statement is from a manager (Manager A) at the DOE facility at which the Individual is employed. Ex. C at 1. This statement outlines the Individual’s importance to a vital DOE program.⁵ Ex. C at 1. Manager A further indicates that the Individual has “repented, learned and has grown from this unfortunate event.” Ex, C at 2. The second statement is from another manager at the DOE facility (Manager B). Manager B also outlines the Individual’s importance to the vital DOE program. Ex. C at 4-5. Manager B’s statement also indicates his complete confidence in the Individual’s “character, loyalty, and commitment to our mission and national security.” Ex. C at 5. The third statement is from another manager at the DOE facility (Manager C). Manager C also outlines the Individual’s importance to the vital DOE program. Ex. C at 6-8. Manager C also states that the Individual “has impressed me with his strong work ethic, technical competency, reliability, and strength of character.” Ex. C at 6. The fourth written statement is from the Individual’s wife and is dated February 8, 2022. Ex. C at 9-10. The Individual’s wife stated that the Individual’s DUI was “out of character” and eventually led to his personal growth. Ex. C at 9-10. The Individual’s wife asserts that the Individual and her have abstained from using alcohol for the past 8 months. Ex. C at 10.

The individual has also submitted his employee performance appraisals for the three past years. Ex. D.

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 substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, citing the Individual’s three alcohol-related arrests and the Psychologist’s conclusion that the Individual meets the DSM-5 criteria for AUD. This information 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, . . . or other incidents of concern, regardless of the

⁵ I note that the regulations specifically state: “The possible adverse impact of the loss of the individual's access authorization upon the DOE program in which the individual works shall not be considered by the Administrative Judge.” 10 C.F.R. § 710.27(b).

frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder,” “diagnosis by a duly qualified medical or mental health professional (e.g. . . . clinical psychologist . . .) of alcohol use disorder,” or “the failure to follow treatment advice one diagnosed.” Guideline G at §§ 22(a), (d) and (e).

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 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. Hearing Testimony

At the Hearing, the Individual testified that his “wife had a significant issue with alcohol” but is now abstaining from alcohol use. Tr. at 16-17, 22. Some of his other friends have begun abstaining from alcohol use as well. Tr. at 18. He has also discontinued his association with some of his old drinking buddies. Tr. at 17. He testified that his last DUI occurred after an intense argument with his wife about her alcohol consumption. Tr. at 18-19. He attended a court-ordered alcohol education program [the AEP] which consisted of 10 education classes and five group sessions. Tr. at 20, 31-32. After he completed the AEP, he gave his wife an ultimatum to quit drinking or end their marriage. Tr. at 20. At that point, he decided to stop using alcohol as well. Tr. at 20. He found it easy to stop using alcohol and has not experienced any cravings. Tr. at 20-21, 24, 29. His insurer would not pay for him to attend a current alcohol treatment program since he had not used alcohol for a period of eight months. Nonetheless he is trying to obtain counseling from his Employee Assistance Program. Tr. at 21, 40-41, 49-50. The Individual began undergoing PEth tests in August 2021. Tr. at 23. The August 2021 PEth test was positive since he took it a week or two after he stopped using alcohol. Tr. at 23-24.

The AEP made the Individual think about his and his wife’s alcohol use. Tr. at 21-22, 34-35. He testified that “I quit drinking, my wife has quit drinking, that is the only thing that's probably saved

our marriage.” Tr. at 28. He further testified: “Everything’s’ better. Life’s been better since quitting.” Tr. at 28. He also testified that his relationship with his children has also improved. Tr. at 35-36. The Individual testified that he last used alcohol in the last half of July 2021. Tr. at 41. The Individual repeatedly testified that he does not dispute his AUD diagnosis and agreed that he has a problem with alcohol. Tr. at 43, 47-48. However, when the Individual was asked “Do you think it’s safe for you to drink in the future?” the Individual responded by stating:

I don't know if I would -- to be quite honest, I -- my thought process was to just quit drinking. I mean, I don't intend on drinking. I would be curious at some point to maybe get reevaluated for peace of mind to say that I don't, to be able to just say, yeah, I don't have a drinking problem. I don't -- right now I don't feel like I have a drinking problem. I'd like to know what somebody else's opinion of that is, to be honest. But no. I don't -- I don't intend on drinking at all.

Tr. at 48. The Individual testified that he has lost weight and has more energy after discontinuing his alcohol use. Tr. at 43. He also believes that he is happier and more productive. Tr. at 43. The Individual admitted that he keeps alcohol in his home for guests. Tr. at 45.

The Psychologist testified at the Hearing after observing the Individual’s testimony. She testified that the Individual met the DSM-5 criteria for AUD, Moderate,⁶ in early remission. Tr. at 58, 83. The Psychologist testified that the Individual’s history of two DUI’s “is extremely concerning.” Tr. at 58. When she conducted her evaluation of the Individual, he was still using alcohol to excess, and “would regularly drink to the point of intoxication.” Tr. at 59. As a result, she recommended that the Individual “demonstrate 12 months of controlling his use of alcohol by not drinking to excess.” Tr. at 59. The Psychologist did not recommend that the Individual fully abstain from alcohol use, because she “wanted to give him the benefit of the doubt that he could control his drinking.” Tr. at 62. She further testified: “the reason that I said 12 months [was that] I wanted him to get into a level of sustained remission of alcohol use disorder.” Tr. at 59. She further recommended that the Individual “actively participate in a chemical dependency rehab program.” Tr. at 60-61. She does not believe that the AEP met this recommendation, although she testified that the Individual had gained a lot from the AEP including “greater insight into the impact of alcohol on his life and relationships,” “identifying the values that are important to him,” and “being involved in activities that are meaningful to him.” Tr. at 63. However, she expressed a concern that the Individual had not developed a formal, written relapse prevention program. Tr. at 63. She was also concerned by the Individual’s “ambivalence around whether he still has a drinking problem.” Tr. at 64. She testified that the PEth results submitted by the Individual demonstrate his ability to control his alcohol use for the past eight months. Tr. at 65, 92. Noting that she was “a little on the fence about whether I can say that’s long enough,” the Psychologist opined that the Individual’s AUD is now in early remission and that there was now “quite a bit of evidence in favor of rehabilitation,” but “not quite enough.” Tr. at 66-67. The Psychologist opined that the Individual still needs to have a formal written relapse prevention program, especially given his wife’s alcohol issues, and some connections to other people with long-term sobriety, such as

⁶ The Psychologist testified that had the Individual’s AUD severity been “mild” instead of “moderate” it would not have affected any of her recommendations or conclusions. Tr. at 96-97.

an Alcoholics Anonymous (AA) sponsor.⁷ Tr. at 67. The Psychologist stated: “I don't think there's a huge amount more work that needs to be done, but my -- I don't think we're quite there yet.” Tr. at 68, 83. She opined that his prognosis is “fair to good.” Tr. at 68. She testified that because the Individual is still in early remission, “there is a real possibility of his relapsing.” Tr. at 69. She subsequently testified that “I think we're very close to saying he's unlikely to relapse.” Tr. at 69. She further testified that the Individual has demonstrated that he can control his drinking, but reiterated that he still needs to have a written relapse prevention plan. Tr. at 97. She further opined that there is a high probability that the Individual will control his alcohol use going forward, however, she is still concerned that the Individual is naïve about the challenges he faces in doing so and that the Individual needs more structure and contingency planning. Tr. at 97-98.

V. Analysis

The Individual has a troubling history of three alcohol-related arrests.⁸ After the most recent arrest on September 18, 2020, a court mandated that he attend the AEP. The AEP and the Psychologist's Report were clearly an eye-opening experience for the Individual: they provided him with a valuable insight into the effects that his alcohol use was having on him, his marriage, and his children. By the time he completed the AEP on July 27, 2021, he had decided to abstain from using alcohol.⁹ The PEth test results submitted by the Individual indicate that he continued abstaining from alcohol for the next eight months. During the hearing, the Individual appeared ambivalent on whether he had a problem with alcohol,¹⁰ but indicated that he did not disagree with the Psychologist's conclusion that he has AUD. The Individual also exhibited some ambivalence about his future intentions concerning alcohol. His testimony further indicates that he has not obtained any counseling, or treatment for his AUD, as recommended by the Psychologist, or joined any self-help groups. While the Individual was able to articulate the insights he had concerning the negative effects caused by his past alcohol use, and demonstrate his ability to abstain from alcohol use for an extended period of time (but not enough time to constitute sustained remission from AUD), the Individual still appeared to have insufficient insight into some of the potential challenges to his recovery that the future may hold (including those challenges that may arise if his wife is unable to maintain her sobriety) and does not appear sufficiently prepared for these challenges by building a professional or sobriety based support network such as AA and creating, with the assistance of substance abuse professionals, a formal written relapse prevention plan.

⁷ The Psychologist testified that had the Individual attended a formal treatment program, he most likely would have developed a relapse prevention plan since it is “a standard part of a treatment program.” Tr. at 96.

⁸ The Individual claims that the Drunk in Public/Disorderly Conduct charge was for Disorderly Conduct only. However, the Individual admitted that he received this charge after a verbal altercation with a police officer as he was leaving a bar.

⁹ The LSO enclosed a copy of the Psychologist's Report with the July 7, 2021, Notification Letter. Notification Letter at 1.

¹⁰ I note that despite his other testimony, it appeared that the Individual believed his problem with alcohol was in the past and now considers that problem to be resolved since he is no longer using alcohol.

Guideline G

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 mitigating condition set forth at § 23(a) is not present. Only 18 months have passed since the Individual's third alcohol-related arrest. The fact that the Individual has had at three alcohol-related arrests creates a concern that his misuse of alcohol might recur and, since he has not provided sufficient evidence of his long-term abstinence, continues to cast doubt on his current reliability, trustworthiness, and judgment.

The mitigating condition set forth at § 23(b) is not present. The Individual has acknowledged that he had a problem with alcohol use, but as discussed above, he has not provided sufficient evidence of actions taken to overcome this problem, and he has only shown that he has abstained from alcohol use for eight months rather than the recommended 12 months,¹¹ and has therefore not sufficiently demonstrated a clear and established pattern of modified consumption or abstinence.

¹¹ The Psychologist did not recommend that the Individual completely abstain from alcohol use. To this extent, the Individual exceeded the recommendation of the Psychologist for eight months of the recommended 12 months. However, an eight-month period is only two thirds of the recommended 12-month rehabilitation period, given the concerns I have concerning the Individual's ability to refrain from problematic alcohol use going forward, I find that the Individual's ability to control his use of alcohol for eight months does not fully resolve the security concerns raised by his three alcohol-related arrests and AUD diagnosis. While the Individual also testified that he had reduced his alcohol consumption prior to his decision to completely abstain from alcohol use, this assertion is insufficiently corroborated in the Record.

As discussed above, I find that the AEP was an education program, rather than a treatment program. Accordingly, the mitigating conditions set forth at § 23(c) and § 23(d) are not present since the Individual has not participated in a treatment program.

In sum, I find that none of the mitigating factors listed above are applicable in this case. Accordingly, I find that the Individual has not sufficiently mitigated or resolved the security concerns raised under Guideline G by his three alcohol-related arrests.

VI. Conclusion

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 commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guideline G. 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 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