

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 10–12. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted eleven exhibits (Ex. 1–11). The Individual did not submit any exhibits. The Individual testified on his own behalf and offered the testimony of his father and supervisor. Hearing Transcript, OHA Case No. PSH-24-0070 at 10, 17, 55 (Tr.). The LSO called the DOE Psychologist to testify. *Id.* at 71.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. Guideline G relates to security risks arising from excessive alcohol consumption. “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.” Adjudicative Guidelines at ¶ 21. In citing Guideline G, the LSO relied upon the DOE Psychologist’s conclusion that the Individual drinks habitually to the point of impaired judgment and binge drinks on a regular basis. Ex. 1 at 5. The LSO also noted that the Individual has on two occasions been charged with driving while intoxicated (DWI), most recently in October 2023. *Id.*

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 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 Dep’t 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *Id.* at § 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

In January 2019, the Individual was arrested and charged with DWI - Drug Intoxication, Possession of Drug Paraphernalia, Possession of Marijuana, Possession of an Open Container of

Alcohol, No Seatbelt, Defective Taillight, Expired Plates, and Driver's License Restrictions.² Ex. 7 at 31–32. In October 2023, the Individual was arrested and charged with DWI. Ex. 6 at 27. In the LOI, the Individual explained that while driving home from a social event, he saw his girlfriend get into a car accident and pulled over. Ex. 7 at 27. At the social event, he consumed “three plastic cups” of a mixed drink. *Id.* When law enforcement arrived, the Individual was not in his car but was asked to perform field sobriety tests and complete a breathalyzer test, which registered a 0.10 reading. *Id.* at 28. As a result of this charge, the Individual went through a diversion program which would cause the charge against him to be dismissed upon the successful completion of the state's substance awareness traffic offender program. Tr. at 24–25, 51. In his LOI, the Individual also indicated that he had been drinking “half a pint” of “hard liquor” “once a weekend” since the October 9 arrest. Ex. 7 at 33–34. Prior to the October 9, 2023, arrest, he was consuming “half a pint” of “hard liquor” “once or twice on weekends.” *Id.* at 35.

The DOE Psychologist indicated that in his view, the Individual “drinks habitually and he binge consumes alcohol to the point of impaired judgement on a regular basis.” Ex. 8 at 51. The report indicated that the Individual told the DOE Psychologist that he consumed “half a pint” of liquor once or twice a week, which would be considered “binge drinking.” *Id.* This pattern began when the Individual was about 24 or 25 years old. *Id.* at 49. At the time of the interview, the Individual was still drinking on a weekly basis. Tr. at 86.

A Phosphatidylethanol (PEth) blood test was performed in conjunction with the DOE Psychologist's evaluation. Ex. 8 at 50–51. PEth is a “direct alcohol biomarker which is found in human blood following alcohol consumption.” *Id.* at 50. The Individual's PEth test came back with a value of 58 ng/ml, which the DOE Psychologist stated in the report “indicates he regularly consumes alcohol.” *Id.* at 51.

In the report, the DOE Psychologist recommended that the Individual cease consuming alcohol. *Id.* at 52. He also suggested that the Individual attend a weekly substance abuse treatment program from a licensed provider for a period of twelve weeks, attend a relapse prevention group twice a month for three months after completing the treatment program, and attend the same program monthly for another six months. *Id.* The DOE Psychologist further recommended that the Individual attend Alcoholics Anonymous (AA) or SMART Recovery³ and work to progress in one of those programs. *Id.*

² The DOE Psychologist's report states that the Individual pleaded guilty to the DWI charge and was sentenced to two years of probation, which he completed successfully. Ex. 8 at 48–49.

³ SMART stands for Self-Management and Recovery Training. According to its website,

SMART [program] is an evidenced-based recovery method grounded in Rational Emotive Behavioral Therapy (REBT) and Cognitive Behavioral Therapy (CBT), that supports people with substance dependencies or problem behaviors to:

1. Build and maintain motivation
2. Cope with urges and cravings
3. Manage thoughts, feelings and behaviors
4. Lead a balanced life

The Individual testified that he has not consumed any alcohol since March 13, 2024. Tr. at 22. As a result of his DWI, the Individual attended a required course about substance abuse designed for people who received substance related traffic violations. *Id.* at 24. That class taught him about how alcohol and intoxication affect a person's brain. *Id.* He also testified that since he has stopped consuming alcohol, he has been happier, and he can "feel the difference and see the difference in [how] alcohol affects the body . . . once you've actually stopped." *Id.* at 28. Instead of consuming alcohol, the Individual has been working out and playing basketball at his local gym. *Id.* at 28–29.

The Individual has also been attending AA approximately twice a week since March of 2024. *Id.* at 22. At the time of the hearing, he did not have a sponsor because the person he asked stopped attending AA. *Id.* at 42. He has made connections with other people at meetings but has not asked anyone else to be his sponsor yet. *Id.* at 42–43. The Individual was working on step seven of the twelve steps of AA at the time of the hearing, and he explained that that step involved asking forgiveness and learning to admit when you are wrong. *Id.* at 43.

The Individual has looked for substance abuse treatment programs to enroll in, but struggled to find an appropriate program. *Id.* at 45–46. He eventually found a recommendation for a program and made some phone calls about it, but the program did not work with his insurance, so he was working on finding another way to attend. *Id.* at 47.

The Individual's father testified that the Individual lived with him and his wife, the Individual's mother. *Id.* at 52. He has not seen the Individual drink since his DUI. *Id.* at 58, 64–65. He also confirmed that the Individual has been attending AA meetings "a couple of times a week." *Id.* at 63. The father asserted that the Individual has a strong and encouraging family around to support him. *Id.* at 59.

The Individual's supervisor testified the Individual performed his work appropriately and to her knowledge has never been impaired at work. *Id.* at 11. However, she also stated that she had concerns about his ability to keep national secrets because he has historically "had a hard time following [] company policies and procedures." *Id.* at 12.

At the hearing, the DOE Psychologist testified that he had not seen adequate evidence of reformation or rehabilitation from the Individual. *Id.* at 76. He gave the Individual a prognosis of fair on a scale of excellent, very good, good, average, fair, poor. *Id.* at 86. He explained that based on his observation of the Individual's testimony, he did not believe that the Individual had an adequate understanding of the problems that alcohol had caused in his life. *Id.* at 75. The DOE Psychologist was also concerned that the Individual had not put in more effort to seek treatment prior to the hearing and felt that the Individual did not demonstrate good follow through. *Id.* at 75–76. Finally, the DOE Psychologist explained that although the Individual does not meet the criteria for a diagnosis under DSM-5-TR, a treatment program would help the Individual better understand the effect that binge drinking has had on his life and provide him with skills to address those impacts. *Id.* at 82–83.

What is SMART Recovery?, SMART Recovery, <https://smartrecovery.org/what-is-smart-recovery> (last visited Jun. 20, 2024).

V. ANALYSIS

Conditions that could mitigate security concerns under Guideline G include:

- (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; and
- (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.

Id. at ¶ 23(a)-(d).

The Individual's DUI was recent as it occurred less than a year prior to the hearing. The Individual stated in the LOI and to the DOE Psychologist that he consumed alcohol excessively once or twice a week and, at the time of the DUI, had done so at this level since he was 24 or 25 years old. This pattern of alcohol consumption is both frequent and recent. The Individual did not provide any evidence that the DUI or his alcohol misuse occurred under unusual circumstances. Thus, mitigating factor (a) does not apply here. As to mitigating factor (b), at the time of the hearing, the Individual had only been abstinent from alcohol for a little under three months. That is not sufficient time to demonstrate a clear and established pattern of abstinence. Further, the Individual has not provided any laboratory tests that support his testimony about his abstinence. As such, mitigating factor (b) does not apply. The Individual is not currently participating in counseling or a treatment program, nor has he previously completed such a program. Therefore, mitigating factors (c) and (d) are inapplicable.

Accordingly, I find that none of the mitigating conditions have been satisfied, and that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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