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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: June 5, 2017)
_____)

Case No.: PSH-17-0041

Issued: September 15, 2017

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.²

I. BACKGROUND

On November 3, 2016, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual. During this PSI, the Individual provided information to the LSO revealing that he had failed to report an alcohol-related arrest on a Questionnaire for National Security Positions (QNSP) that he submitted on September 29, 2005, had failed to report a second alcohol related arrest, which occurred while his clearance was being processed, and had, on two occasions, attempted to enter a DOE facility parking lot with a firearm. The Individual was subsequently evaluated by a Psychiatrist (the Psychiatrist) at the LSO’s request. The PSI and psychiatric examination did not resolve the security concerns raised by the Individual’s alcohol-related arrests, QNSP omissions, failure to report his DUI arrest, and his attempts to bring a firearm into a DOE facility. Accordingly, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for 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 OHA. The Director of OHA appointed me as the Administrative Judge

¹ Under the Regulations, “Access authorization” means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his supervisor, and the Psychiatrist. *See* Transcript of Hearing, Case No. PSH-17-0041 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted four exhibits, marked as Exhibits A through D.³

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 Guidelines E and G of the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (the Guidelines). The LSO alleges, under Guideline E, that the Individual has provided false and misleading information by failing to list his 2003 underage drinking arrest on his September 29, 2005, QNSP; and failed to report his December 4, 2005, DUI arrest to the LSO, until December 21, 2015, when he reported it on a QNSP which he submitted on that date. The LSO further alleges, under Guideline H, that the Individual attempted to enter the DOE facility at which he is employed with a firearm on two occasions. The Adjudicative Guidelines state: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” Guideline E at § 15. Among those conditions set forth in Guideline E that could raise a disqualifying security concern are: “(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . [or] determine national security eligibility or trustworthiness . . .; (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator, [or] security official, . . . involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.” Guideline E at §15(a), (b).

The LSO alleges, under Guideline G, that the Individual has habitually used alcohol to excess based upon his reported alcohol use history, his binge drinking, his September 4, 2005, DUI arrest, and his 2003 underage drinking arrest. The Individual’s reported alcohol history and alcohol-related arrests, as alleged, adequately justify the LSO’s invocation of Guideline G and raises significant security concerns. 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 are “Alcohol-related incidents away from work, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” and “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Guideline G at § 22 (a) and (c).

III. REGULATORY STANDARDS

³ Each of these four exhibits were highly favorable character references provided by his friends and co-workers.

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that:

The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.

10 C.F.R. §§ 710.7(a). In rendering this opinion, I have considered the following factors:

The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

See 10 C.F.R. § 710.7(c). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In 2003, the Individual was arrested for Underage Drinking. On September 29, 2005, the Individual signed and submitted a QNSP to the LSO, as part of his initial application for a DOE Security Clearance. The Individual did not report his 2003 Underage Drinking arrest on his September 29, 2005, QNSP. On November 28, 2005, the Individual signed a DOE Security Acknowledgement which explained his reporting obligations, including his obligation to report any arrests, in detail. Tr. at 42. On December 4, 2005, the Individual was arrested for Driving Under the Influence of Alcohol (DUI). On February 16, 2006, the DOE granted him a security clearance. Ex. 5 at 6. The Individual did not report his December 4, 2005, DUI arrest until December 21, 2015, when he signed and submitted a QNSP to the LSO. Ex. 5 at 19. In his December 21, 2015, QNSP, the Individual reported that this DUI occurred in January 2006. Ex. 5 at 19. The Individual failed to report his 2003 Underage Drinking arrest in his December 21, 2015 QNSP, however. Tr. at 40; Exhibit 6 at 27-29.

On June 13, 2013, the Individual's car was approached by security guards as he entered a DOE facility's parking lot.⁴ Ex. 5 at 10, 15. When the Individual realized his vehicle was going to be searched, he self-reported that he had a firearm in the vehicle, which was located underneath a seat. Ex. 5 at 11-14. As a result, the Individual was placed on administrative leave for approximately

⁴ At the hearing, the Individual testified that this incident occurred on June 9, 2013. Tr. at 27.

ten days. Ex. 5 at 14. On a previous occasion, during the summer of 2012, security guards had searched the Individual's vehicle and discovered a firearm. Tr. at 27; Ex. 5 at 17. The Individual was not disciplined as a result of that incident however. Ex. 5 at 17.

Because of the security concerns raised by the Individual's DUI, failures to report his two alcohol-related arrests, and incidents involving firearms, the LSO conducted a PSI of the Individual on November 3, 2016. Ex. 5 at 1. During this PSI, the Individual discussed his firearm incidents. In addition, he was questioned about his December 4, 2005, DUI arrest and 2003 Underage Drinking arrest. The Individual reported that on the night of his DUI, he had been consuming beer. Ex. 5 at 21. The Individual expressed uncertainty at his ability to recall how much alcohol he had consumed that night, but estimated that he had consumed four or five beers over a six hour period. Ex. 5 at 21. When the Individual was reminded that he told an Office of Personnel Management (OPM) investigator that he had consumed six to eight beers that evening, the Individual agreed that he had "probably" consumed six to eight beers before his DUI arrest. Ex. 5 at 21. The Individual reported that a blood test indicated that he had a BAC of .088 shortly after his arrest. Ex. 5 at 23. The Individual further reported that his DUI charge was dismissed. Ex. 5 at 23. The Individual also discussed his arrest for Underage Drinking in the summer of 2003. Ex. 5 at 29. The Individual reported that he was required to provide 20 hours of community service as a result of this arrest. Ex. 5 at 29. The Individual reported that he presently consumes alcohol one night a weekend and has a beer or two with dinner once during the week. Ex. 5 at 35. When the Individual was reminded that he had previously reported becoming intoxicated "once to twice a weekend," the Individual stated that he would consume alcohol to the point of intoxication "once a month." Ex. 5 at 35-36. The Individual reported that it would take seven to nine beers to intoxicate him. Ex. 5 at 36. The Individual reported that his last use of alcohol occurred two weekends ago, when he consumed six or seven beers while cleaning his garage. Ex. 5 at 38. He reported that he was last intoxicated about a month before the PSI, when he consumed eight or nine beers. Ex. 5 at 39. The Individual denied that alcohol had ever caused him problems. Ex. 5 at 38. The Individual indicated that he intends to continue using alcohol as he has been doing. Ex. 5 at 44-45.

When the Individual was asked why he did not report his 2003 Underage Drinking arrest in his September 29, 2005, QNSP, the Individual stated: "Probably because of not being clear on what the definition of charged means." Ex. 5 at 45. The Individual was further asked why he did not report his 2003 Underage Drinking charge on his December 21, 2015, QNSP, to which he responded: "I was confused about the convicted, charged definitions." Ex. 5 at 47. The Individual further admitted that he did not report his December 4, 2005, DUI to the LSO. Ex. 50-51. The Individual explained his failure to report his December 4, 2005, DUI to the LSO by stating: "I guess still under the same assumption that I've been confused on the whole ... [and] I guess I assumed that during that time, that you guys would obviously, or the government doing the background checks would know, and see that." Ex. 5 at 51-52.

Because the PSI did not resolve the security concerns raised by the Individual's December 5, 2005, DUI, and 2003 Underage Drinking arrests, omissions from his 2005 and 2015 QNSPs, his two firearms incidents, and his failure to report his DUI, the LSO requested that the Individual be evaluated by the Psychiatrist, who examined the Individual on January 9, 2017, reviewed his personnel security file, the Individual's medical records, and the results of urine screening for drug use. Ex. 4 at 2. On January 22, 2017, the Psychiatrist issued a report. In this report, the Psychiatrist noted that the Individual had met with a licensed psychologist (the Psychologist) on four occasions

beginning on November 30, 2016. Ex. 4 at 3. The Psychiatrist reported that the Psychologist's records concerning the Individual show: "[The Individual] reported a 'history of regular alcohol use (typically consuming 14 beers on the weekend). Two years ago, he consumed approximately 7 beers, five nights per week for one month. [The Psychologist] *diagnosed him as having alcohol abuse disorder*, recurrent depressive disorder, unspecified anxiety disorder, and nicotine dependence.'" Ex. 4 at 3. (emphasis added). In his report, the Psychiatrist reported that, during his psychiatric interview of the Individual, he reported information concerning his alcohol use that was inconsistent with his statements during the PSI. Ex. 4 at 3-4. The Psychiatrist noted that the Individual had admitted becoming intoxicated on a monthly basis in his PSI, and had not attended any Alcoholics Anonymous meetings or received any alcohol treatment. Ex. 4 at 9. During his psychiatric interview, the Individual reported that he consumes from five to six beers one night a weekend, and one or two beers once a week on a weeknight. Ex. 4 at 5. The Psychiatrist did note that the Individual acknowledged that he had developed a tolerance to alcohol, and that he had, on rare occasions, consumed more alcohol than he had intended. Ex. 4 at 5. The Individual informed the Psychiatrist that he had no intent to alter his pattern of alcohol consumption in the future. Ex. 4 at 5.

The Psychiatrist found that the Individual could not be diagnosed with any alcohol disorder or other clinical syndrome under either DSM-IV or DSM-5. Ex. 4 at 9. However, noting that the Individual indicated he gets intoxicated on a monthly basis, the Psychiatrist opined that the Individual "has consumed alcohol frequently and habitually, in quantities which are considered bingeing."⁵ Ex. 4 at 10.

⁵ The Psychiatrist further cited several government agency's standards in support of his conclusion that the Individual consumes alcohol to excess, stating:

First, the United States Department of Health and Human Services (DHHS), National Institute on Alcohol Abuse and Alcoholism (NIAAA), states that men, for health reasons, should not consume more than four standard alcohol drinks in a day, and should not consume more than 14 alcohol drinks in one week. The employee has regularly or at least frequently consumed in excess of four standard alcohol drinks in a single day since approximately 2002 according to his history . . .

Second, the United States Centers for Disease Control (CDC) defines 'excessive alcohol use' to include binge drinking, heavy drinking, and alcohol use by people under age 21 . . . For the CDC, heavy drinking is defined as consuming 15 drinks or more per week for men, and binge drinking for men is defined as drinking five or more drinks on a single occasion within two hours.

Third, the United States Substance Abuse and Mental Health Services Administration (SAMHSA) defines 'binge drinking' for men as drinking five or more drinks within two hours on at least one day in the past 30 days. SAMHSA defines "heavy drinking" as drinking five or more drinks on the same occasion on each of five or more days in the past 30 days.

By any and all of these standards of excessive alcohol consumption, the employee has consumed large amounts of alcohol by virtue of his drinking six to ten beers in a day or evening though he reported that this does not occur more than twice a week and typically just once a week. I consider such a frequency of use to be habitual, and binge in quantity

Noting that the Individual had not changed his alcohol consumption pattern and had not expressed any intention to do so, the Psychiatrist opined:

I would not consider him to be rehabilitated or reformed unless and until he demonstrated either abstinence from all alcohol use for the minimum of a year or at least a significant reduction of his alcohol consumption to one to two beers maximum per occasion for at least a year. He is not interested in attending substance use treatment services or verified AA meetings because he does not believe that he has an alcohol problem or disorder. It would be difficult for him to learn to limit his alcohol consumption to one to two beers on future occasions without such intervention and commitment to do so.

Ex. 4 at 11.

V. ANALYSIS

Guideline E

Firearms Incident

At the hearing, the Individual testified that his facility's security force searched his vehicle and found a hand gun. Tr. at 26. On a subsequent occasion, the Individual informed a security guard that he had a handgun in his vehicle when he realized his vehicle was going to be searched. Tr. at 26. The Individual testified that the first incident occurred because he had forgotten that he had the handgun with him. Tr. at 29. The Individual further testified that he had been careful to avoid bringing his hand gun to work since the second incident. Tr. at 29-37. The Individual testified that he never intended to bring his handgun to the DOE Facility. Tr. at 60. The Individual explained that the firearms incidents occurred as a result of his carelessness. Tr. at 62.

Guideline E sets forth seven conditions which can mitigate security concerns arising under Guideline E. Only one of those conditions applies to the Individual's two incidents involving firearms. Specifically, § 17(c) states that mitigation may occur when "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does no cast doubt on the individual's reliability, trustworthiness, or good judgement." While the Individual's firearms incidents were not particularly significant and occurred four years ago, those incidents, when considered along with the derogatory information raising the other security concerns at issue in this case, continue to cast doubt upon the Individual's reliability, honesty and judgment.

Concealment of Two Alcohol-Related Arrests

At the hearing, the Individual, was asked why he failed to report his 2003 arrest for Underage Drinking. In response he testified that: "I was getting confused on the definitions of charged and expunged and -- and dismissed. And, I mean, really that is no excuse. I can read back at the paperwork now, and I read the questions now, and they clearly state, in my opinion, that I should have reported that underage drinking." Tr. at 38. He further testified that, after the Underage

Drinking charges were dismissed, he had been advised by his criminal defense counsel that he could treat the arrest as though “it had never happened.” Tr. at 38. He noted that he had not received any legal advice on how to fill out his QNSP. Tr. at 39.

The Individual admitted that he had signed a DOE Security Acknowledgement approximately a week before his December 4, 2005, DUI arrest. Tr. at 4. Nevertheless, the Individual testified that he failed to report his DUI arrest because he did not remember this reporting requirement. Tr. at 44. The Individual further testified: “I was not actually arrested. I was just taken to a hospital for bloodwork. And then I was sent home with my parents.” Tr. at 44. The Individual admitted that he should have reported his DUI arrest to the LSO. Tr. at 46. The Individual also testified that he assumed the Government would be aware of his DUI arrest. Tr. at 46-47. The Individual testified that he was not purposely trying to hide his arrest, noting that he reported his DUI in his 2015 QNSP. Tr. at 49.

Three of the seven conditions which can mitigate security concerns arising under Guideline E, apply to the present circumstances. Section 17(a) provides that mitigation of security concerns raised under Guideline E may be appropriate when: “the individual made *prompt*, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” (emphasis added). In the present case, it is clear that the Individual never took action to correct his omission of his 2003 Underage Drinking arrest from two QNSP’s. Moreover, the Individual did not correct his failure to report his 2005 DUI, until ten years after he was required to do so.

Section 17(b) provides that mitigation for security concerns arising under Guideline E may be appropriate when: “the . . . omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual *specifically concerning security processes*. . .” (emphasis added). While the Individual claims he relied upon the legal advice given by his attorney to treat his 2003 Underage Drinking arrest “as though it never happened,” the Individual admitted at the hearing that advice was not provided specifically concerning his security clearance. Tr. at 39.

Section 17(c) states that mitigation may occur when “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does no cast doubt on the individual’s reliability, trustworthiness, or good judgement.” The Individual’s failure to report required information on two QNSP’s, and to report an arrest are not minor offenses. Nor has the passage of time mitigated the Individual’s omissions: the Individual’s failure to report his 2015, DUI continued until December 2015, and the Individual’s failure to disclose his 2003 Underage Drinking Arrest continued until he was confronted during his November 3, 2016, PSI. Moreover, the three examples of the Individual’s failure to provide the LSO with information cannot reasonably be characterized as “infrequent.” The evidence in the record provides me with no reason to conclude that they are unlikely to recur. Finally, the circumstances under which these omissions occurred (*i.e.* concealing two alcohol-related arrests for 10 years) casts continuing doubt upon the Individual’s reliability, trustworthiness, and good judgment, especially in light of the other derogatory information at issue in the present case.

Accordingly, I find that the security concerns about the Individual raised under Guideline G have not been resolved.

Guideline G

At the hearing, the Individual testified that he continues to use alcohol. However, he testified that he has “slowed way down.” Tr. at 55. First he testified that he consumes one or two beers at a sitting, and subsequently testified that he might occasionally consume three or four beers at a sitting. Tr. at 54, 59, 63. He further testified that he uses alcohol once or twice a week. Tr. at 63. The Individual testified that he cannot afford to purchase much alcohol because he is not currently employed, and because he is too busy running his “side business.” Tr. at 55-56, 59. The Individual further testified that he intends to further reduce his alcohol consumption and would be willing to start alcohol treatment, if it were recommended. Tr. at 62. The Individual testified that his motivation for reducing his alcohol consumption is to “hold [himself] to a higher professional character.” Tr. at 69. The Individual further testified that he has not sought treatment for alcohol issues because he did not believe he had any problems with alcohol, and that he had not received any recommendations to obtain alcohol treatment. Tr. at 54-55, 65, 70. The Individual testified that he did not know how much alcohol he could appropriately consume. Tr. at 63-64. However, the Individual agreed that he was drinking to excess at the time of the psychiatric interview, and agreed he had engaged in instances of binge drinking, and was concerned about his past history of binge drinking. Tr. at 53-54, 70.

The Psychiatrist observed the testimony of the other two witnesses before providing his own testimony. The Psychiatrist testified that he had examined the Individual for three-and-a-quarter hours on January 9, 2017. Tr. at 72-73. The Psychiatrist testified that the Individual could not be diagnosed with an alcohol disorder, however, he found that the Individual “was a binge and habitual abuser of alcohol.” Tr. at 75. The Psychiatrist testified that he did not believe that the Individual was being honest with him during his psychiatric interview, although the Individual was “trying to be forthcoming.” Tr. at 76. The Psychiatrist believed that the Individual was a poor historian. Tr. at 76-77. The Psychologist testified that his conclusions that the Individual was a binge drinker and habitually used alcohol to excess were based upon the alcohol history provided by the Individual during his PSI, DOE psychiatric evaluation, and the records obtained from a psychotherapist who had treated the Individual in 2016. Tr. at 80. The Psychiatrist testified that the Individual expressed a “minimal” desire to change his alcohol consumption habits during his evaluation. Tr. at 81. The Individual expressed concern about the impact of his alcohol consumption on his security clearance. Tr. at 81. The Psychiatrist did not see any evidence that the Individual was internally motivated to address his problematic alcohol use, or that the Individual had much insight into his alcohol issues. Tr. at 81-82. The Psychiatrist noted that a 15 year pattern of binge alcohol consumption is a significant period of time which will be difficult to change. Tr. at 84. The Psychiatrist testified that the Individual would most likely need intervention to change this pattern. Tr. at 85. The Psychiatrist testified that the Individual needs to abstain from drinking or control his drinking. Tr. at 85. He expressed doubt that the Individual will be able to control his drinking, noting that it can be difficult for some people to control their drinking, especially when they have extensive histories of binge drinking. Tr. at 85. The Psychiatrist opined that the Individual needs to show a one-year period of controlled drinking or abstinence in order to show that he has successfully addressed his binge drinking and excess alcohol consumption. Tr. at 86. The Psychiatrist also testified that the Individual needs professional counseling or participation in a support group to adequately address his binge drinking and excess alcohol consumption. Tr. at 86-87. The Psychiatrist testified that he was concerned that the Individual had

not yet taken the initiative to obtain counseling or intervention. Tr. at 88-89. The Psychiatrist noted that the Individual lack of self-monitoring of his alcohol use was a concern. Tr. at 90. The Psychiatrist testified that the Individual does not sufficiently appreciate the significance of his alcohol problem. Tr. at 90. The Psychiatrist testified that he believed that the Individual is still using alcohol to excess. Tr. at 92.

The record shows that the Individual has a well-established history of frequent binge drinking to intoxication. Ultimately, the Individual's binge drinking resulted in a DUI on December 4, 2005. After that DUI, the Individual continued binge drinking and habitually using alcohol in excess. The Individual claims that he has recently been consuming alcohol in a limited and controlled fashion, limiting himself to a maximum of three or four beers in a sitting. The question before me is whether the security risk posed by the Individual's binge drinking and excessive alcohol use has been sufficiently mitigated.

It is well settled that Part 710 places the burden of persuasion on the individual, because it is designed to protect national security interests. *See, e.g., Personnel Security Hearing*, PSH-17-0015 at 3 (2017). This is not an easy burden for an individual to sustain. 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), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Accordingly, the Individual must come forward with evidence to convince me that granting or restoring his 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).

I note that the only expert whose opinion appears in the record has expressed a belief that the Individual has a continuing problem with excessive alcohol consumption and binge drinking. (The Psychiatrist's report and testimony notes that a treating psychologist diagnosed the Individual with Alcohol Abuse Disorder). While the Individual claims he has recently curtailed his alcohol consumption, albeit without offering any corroborating evidence, he does not acknowledge any problem with his alcohol use or exhibit insight into its effects upon him. Moreover, the Individual has not taken any action to address his alcohol issues, he has neither joined a self-help program such as AA, nor sought professional counseling for his alcohol related issues.

Guideline G sets forth four conditions which can mitigate security concerns arising from an individual's excessive alcohol consumption, three of which pertain to the present case.⁶ Guideline G at § 23. Section 23(a) provides that security concerns arising from alcohol concerns may be mitigated if: "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 good judgment." Clearly, not enough time has passed since the Individual's last episode of excessive alcohol consumption to mitigate the present concerns, since the Individual was engaged in binge drinking and excessive alcohol use at least until his November 3, 2016, PSI, and has not begun any form of treatment for his alcohol issues.

⁶ Only the first two of those provisions apply to the Individual. The third condition only applies to individuals who are currently participating in a treatment program, which the Individual is not. § 23(c). The fourth condition only applies to individuals who have completed a treatment program, which the Individual has not. § 23(d).

Accordingly, I do not find that the Individual's excessive alcohol use is unlikely to recur or does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment.

Section 23(b) of the Guidelines provides that security concerns arising from alcohol concerns may be mitigated if: "the individual acknowledges his [alcohol issues], provides evidence of actions taken to overcome this problem, *and* has established a pattern of . . . responsible use . . ." (emphasis added). § 23(b) provides no basis for mitigation of the Individual's excessive alcohol use and binge drinking, since he has clearly not recognized that he needs help with his alcohol issues and has taken no meaningful actions to address them.

Accordingly, I find that the security concerns raised by the Individual's two alcohol-related arrests, binge drinking, and excessive and frequent excessive alcohol use, have not been sufficiently resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and G. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated the security concerns raised under Guidelines E or 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.

Accordingly, the Individual's security clearance should not be restored at this time. The Individual 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

Date: September 15, 2017