

submitted 17 exhibits, marked as Exhibits 1 through 17 (hereinafter cited as “Ex.”). The Individual submitted 7 exhibits, marked as Exhibits A through G.

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Guideline E relates to conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations, which raises questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. *See* Adjudicative Guidelines at ¶ 15. With respect to Guideline E, the LSO cited the Individual’s three DUI arrests in 2004, 2012, and 2016, his failure to inform an Office of Personnel Management (OPM) investigator that he had a positive urinalysis performed pursuant to an Intensive Outpatient Treatment Program (IOP) and his statement at the same time that he did not know it was the IOP’s policy that he be abstinent. Ex. 2 at 6-7. The LSO also cited the fact that the Individual misled the DOE consulting psychologist about his knowledge of his required abstinence for the treatment program and the deferred prosecution agreement. Ex. 2 at 6-7.

Guideline G relates to an individual’s alcohol consumption, which can raise questions about an individual’s reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO, in the Notification Letter, cited the DOE consultant psychologist’s July 2017 diagnosis of the Individual as suffering from Alcohol Use Disorder, Severe. Ex. 2 at 4-5. The Notification Letter also listed as Guideline G derogatory information the Individual’s three DUI arrests, and his diagnoses of Alcohol Use Disorder, Severe, made during a DUI assessment at a treatment center in December 2016, and later at a second treatment center. The LSO also cited the Individual’s February 2017 diagnosis of Alcohol Use Disorder by the DOE consultant psychologist and his subsequent treatment at the IOP. Also cited were the Individual’s deferred prosecution for his November 2016 DUI, and the Individual’s failed urinalysis test for alcohol in March 2017. Ex. 2 at 2-4.

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), cert. denied, 499 U.S. 905 (1991) (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.

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

The Individual does not dispute the facts alleged in the Notification Letter. Tr. at 68. As such, I adopt the factual allegations in the Notification Letter as my factual findings in this case. In addition to testifying himself, the Individual presented the testimony of three co-workers, a prior counselor, his current probation officer, his Alcoholics Anonymous (AA) sponsor, a parishioner at his church, and his wife. *Id.* at 2-3. The LSO presented the testimony of the DOE consulting psychologist. *Id.* at 3.

The Individual’s co-workers testified that the Individual is trustworthy and an excellent worker. Tr. at 137, 151, 160. They all confirmed that the Individual is more communicative and has been open about his alcohol diagnosis since his DUI. *Id.* at 139, 141, 149, 158. Concluding, two co-workers stated that the Individual is very conscious of the security concerns involved in their profession. *Id.* at 137, 157, 161. The Individual’s fellow parishioner testified that he has known the Individual for approximately one year, although he has seen him at church for the last two-and-a-half years. *Id.* at 125-26. The parishioner indicated that the Individual has been open about his diagnosis and his AA attendance. *Id.* at 126. The parishioner asserted that the Individual is trustworthy and has become more involved and accountable since his DUI. *Id.* at 127. The parishioner testified that the Individual is more dedicated to helping his church community and more communicative since he began attending AA. *Id.* at 127-29.

The Individual’s counselor testified that he was the Individual’s primary counselor for the IOP. Tr. at 24. He asserted that the Individual realized that he had a problem with alcohol after he failed a March 2017 urinalysis and began taking the program seriously, stating “I watched a light come on.” *Id.* He continued that the Individual was diligent attending both the one-on-one counseling sessions and the IOP’s group meetings. *Id.* The counselor opined that the Individual “found the peace and serenity of not drinking.” *Id.* at 59. He agreed with the Alcohol Use Disorder, Severe, diagnosis, but declared that the Individual was currently in full remission. *Id.* at 63.

The Individual’s probation officer testified that the Individual’s performance has been outstanding. Tr. at 71-72. He stated that the Individual has been honest and he considers the Individual to be trustworthy. *Id.* at 72. He indicated that the Individual has been very diligent in his AA attendance,

attending at least twice a week and making up sessions when he is out of town. *Id.* at 90. He further testified that it is not unusual for a person in the deferred prosecution program to fail a urinalysis at the beginning of the program. *Id.* at 94. The probation officer concluded that the Individual “did everything he was supposed to do.” *Id.* at 79.

The Individual’s AA sponsor testified that he has known the Individual about one-and-a-half years and finds him to be one of the greatest examples of someone who is “working with the program, effectively, doing what he is supposed to do in AA.” Tr. at 99. He declared that the two men meet twice a week. *Id.* at 112. Stating that he wants to “go over and give him a hug” every time he sees him because of the changes that he has seen in the Individual, the sponsor asserted that the Individual is compliant and effectively working the program. *Id.* at 99-100. He continued that since his failed urinalysis, the Individual has had a cognitive change. *Id.* at 106. The AA sponsor concluded that the Individual is trustworthy, honest, and open-minded. *Id.* at 102-03.

The Individual’s wife testified that she was “sad and disappointed” by the Individual’s failed urinalysis. Tr. at 165. She claimed that his transformation since then has been incredible and that he is “a new man.” *Id.* at 166. She continued that AA is positive for him, and seeing others change has also been positive for him. *Id.*

The Individual testified that it is very liberating to share his alcohol problem with others. Tr. at 185-86. Prior to his positive urinalysis, the Individual claimed that he thought he had a problem with alcohol but did not think he was an “alcoholic.” *Id.* at 187-88. He stated, “I’m extremely humble for having the opportunity to . . . be able to demonstrate . . . that I’m on a good and right path today. I have the gift of desperation that I’ve never had before.” *Id.* at 189. The Individual concluded that he never intends to consume alcohol again. *Id.* at 242. As to the fact that he failed to tell the OPM investigator about the positive urinalysis, the Individual stated that the OPM investigator did not ask and he did not think to tell him during the first interview. *Id.* at 230.

The DOE consulting psychologist concluded the testimony by opining that the Individual is rehabilitated. Tr. at 252. He asserted that the Individual’s risk of relapse is low. *Id.* at 254. The psychologist stated that he was convinced that the Individual has changed, particularly by the testimony of the sponsor and the parishioner. *Id.* at 252, 254.

V. ANALYSIS

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines at ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting security clearances, I must deny granting if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

A. Guideline G

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and raises questions about an individual's reliability and trustworthiness. Adjudicative Guidelines ¶ 21. Guideline G provides that the following conditions may mitigate security concerns:

(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 (*id.* at ¶ 23(b));

(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 (*id.* at ¶ 23(c));

(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(d)).

In the present case, the Individual has been in counseling since late February 2017. He had a positive urinalysis in March 2017. Nonetheless, I find that several of the Guideline G mitigating factors are applicable in this case. I find paragraph 23(b) of the Guidelines applicable to the Individual given the convincing testimony of his witnesses as to his acknowledgment of his problem with alcohol. He is open about his AA and IOP attendance and has changed greatly since March 2017.

I also find mitigation under paragraph 23(c) applicable since I find that the Individual is actively participating in AA and the IOP. His AA sponsor testified that he is actively participating in meetings and that they meet twice a week to discuss AA principles.

Furthermore, the Individual has completed the IOP and has demonstrated a clear and established pattern of abstinence since March of 2017 as required by paragraph 23(d) of the Guidelines. In addition, the DOE consulting psychologist convincingly opined that the Individual has changed since his initial evaluation in July 2018. He testified that the Individual is rehabilitated and that his risk of relapse is low, and he stated that we was particularly impressed by the interaction between the Individual and his sponsor and the testimony of the church parishioner. It is clear to me that the Individual now acknowledges that he has an issue with alcohol and has fully participated in both his treatment program and AA. In addition, the Individual has been abstinent and compliant with his treatment program as well as his deferred prosecution agreement. Therefore, I find that the Individual has mitigated the Guideline G security concerns.

B. Guideline E

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 national security investigative or adjudicative processes. Adjudicative Guidelines ¶ 15.

The LSO raised three derogatory pieces of information under Guideline E, including that the Individual had three DUI arrests, that he failed to inform the OPM investigator at the first interview that he had a positive urinalysis, and that he misled the DOE consulting psychologist about his knowledge of his required abstinence for the treatment program and the deferred prosecution agreement. Ex. 2 at 5-6. All of the individual's concealments were related to alcohol misuse.

The Individual has acknowledged his Alcohol Use Disorder. The DOE consulting psychologist testified at the hearing that the Individual's alcohol misuse could have led to his misrepresentations to the OPM investigator. Tr. at 256. The Individual's earlier denials and confusion are an aspect of the alcohol use disorder for which the individual has received treatment and now evidences adequate reformation and rehabilitation. Cf. Adjudicative Guidelines at Guideline E ¶ 17(d) (mitigation possible where an individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate factors that caused the untrustworthy or inappropriate behavior, and such behavior is unlikely to recur).

These factors all support a finding of mitigation of the Guideline E security concerns. See *Personnel Security Hearing*, Case No. PSH-17-0045 (2018); *Personnel Security Hearing*, Case No. PSH-17-0045 (2017); *Personnel Security Hearing*, Case No. PSH-17-0028 (2017). I conclude that all of these issues raised by the LSO are related to the Individual's alcohol use disorder, from which he has been rehabilitated according to both his counselor and the DOE consulting psychologist. For the foregoing reasons, I find that the Individual has resolved the Guideline E security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines E and G of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

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