



explained that the derogatory information fell within the purview of Guidelines E and G of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing, the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO submitted 11 exhibits (Exs. 1–11). The Individual submitted 15 exhibits (Exs. A–O). The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **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.

The LSO alleges that the Individual was untruthful when he stated during a psychiatric evaluation in April 2018 that he had been abstinent from alcohol for nearly two months. Laboratory testing conducted the same day indicated that the Individual had consumed alcohol heavily within the preceding four weeks and had consumed alcohol in some quantity within the preceding four days. Ex. 1 at 1. 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 Guideline E ¶ 15.

The LSO alleges that the Individual was diagnosed with Alcohol Use Disorder-Moderate by a DOE Psychiatrist. Ex. 1 at 1. The LSO further alleges that the Individual was arrested and charged with Driving While Intoxicated (DWI) in October 2017, with two open containers of alcohol in his vehicle and a breath alcohol content (BAC) of .27 at the time of his arrest. *Id.* at 2. The LSO also alleges that the Individual continued consuming alcohol after a March 2015 recommendation from his physician to abstain from alcohol for health reasons. *Id.* Guideline G (Alcohol Consumption) states: “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. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22.

### 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

In 2015, the Individual's physician advised him to curtail his drinking to help lower his liver enzymes. Ex. 9 at 86. However, the Individual continued consuming alcohol and by late 2016 he was consuming between two and four alcoholic beverages on four nights every week. Ex. 7 at 3.

In late 2017, the Individual planned to attend a homecoming event at his alma mater. Ex. 9 at 7. Between 1:00 PM and 3:30 PM, while packing for his trip, the Individual consumed four glasses of vodka and ginger ale, each containing about two ounces of vodka. *Id.* at 13–14. Around 9:30 PM, the Individual pulled over to the shoulder of the road to attend to a personal matter. *Id.* at 8–10. A state trooper pulled up behind him and stated that he had received a report of someone driving erratically; he asked the Individual if he had been drinking and the Individual responded that he had. *Id.* at 9, 28. The officer performed a field sobriety test on the Individual, then arrested him for DWI. *Id.* at 9–10. Upon searching the vehicle, the officer found a bottle of vodka and a bottle of cranberry juice with vodka in it. *Id.* at 10, 20. The Individual had consumed about one third of the cranberry juice and vodka during his drive. *Id.* at 21. After his arrest, the Individual was taken to a detention center, where a Breathalyzer test registered his BAC at .27. *Id.* at 35–36. The Individual voluntarily entered an outpatient treatment program on February 19, 2018. Ex. 7 at 4. He also began attending Alcoholics Anonymous (AA) meetings. *Id.*

The Individual was evaluated by the Psychiatrist in early April 2018. Ex. 7. After evaluating the Individual, the Psychiatrist diagnosed him as suffering from Alcohol Use Disorder-Moderate, citing the Individual's continued alcohol consumption despite a persistent desire to cut back on or abstain from alcohol; the Individual's continued alcohol consumption despite concerns expressed to him by his doctor and spouse; the Individual's continued alcohol consumption after his alcohol use interfered with his work; and the Individual's continued alcohol consumption despite knowledge of having a health problem affected by alcohol consumption. *Id.* at 6. The Psychiatrist found no evidence of rehabilitation or reformation. *Id.* at 8. He recommended that the Individual demonstrate maintenance of sobriety for six to twelve months; attend a self-help recovery program (such as AA) at least twice per week during that time and obtain a sponsor; and attend individual counseling sessions to cope with issues that have contributed to his drinking in the past. *Id.*

The Psychiatrist ordered blood tests to determine the Individual's recent alcohol consumption, to which the Individual submitted on April 10, 2018. Ex. 7 at 11. The Individual stated in his PSI and subsequent psychological evaluation that he had abstained from alcohol since mid-February 2018. Ex. 7 at 4; Ex. 9 at 73. However, the results of the blood and urine tests showed heavy alcohol consumption in the four weeks preceding testing and some amount of alcohol consumption in the four days preceding the testing. Ex. 7 at 2.

Before the hearing, the Individual entered into the record evidence of his frequent AA attendance. Ex. H; Ex. O. The Individual also entered test results from a blood test taken on January 10, 2019, which showed that the Individual had not consumed alcohol in the preceding four days. Ex. G. However, the Individual submitted two blood test results from samples taken on January 26, 2019 and February 1, 2019, indicating that he had consumed alcohol within the preceding 30 days. Ex. M; Ex. N. This alcohol consumption coincided with the holiday period occurring directly after the unexpected death of the Individual's youngest child. Ex. E. The Individual entered counseling to cope with his grief. Ex. F.

At the hearing, the Individual presented the testimony of his best friend, his AA sponsor, and the clinical director of his outpatient treatment program. The Individual's best friend testified that he had not seen the Individual consume alcohol since his DWI, though he had knowledge of a recent relapse around Christmas of 2018. Tr. at 17, 32. He testified that he understands that the Individual intends to abstain from alcohol indefinitely. *Id.* at 33.

The Individual's sponsor had known the Individual since November or October of 2018. Tr. at 42–43. He testified that he had seen the Individual at AA nearly every single day since then. *Id.* at 43. He became the Individual's sponsor shortly after they met. *Id.* at 44. He provides the Individual with moral support and helps familiarize him with AA; they talk almost every day. *Id.* at 44–45. The sponsor testified that the Individual is very engaged in meetings and has volunteered to participate in service activities. *Id.* at 47. He described the Individual as honest, responsible, and trustworthy. *Id.* at 49–50.

The Individual took responsibility for his lack of candor with the Psychiatrist, stating that he had not been truthful and that he wanted “to go on the record at this time to apologize to the agency and to [the DOE Psychiatrist].” Tr. at 75. He testified that when asked about abstinence, he described the period during which he had moderated his drinking, rather than abstained. *Id.* at 76.

He testified that he began alcohol treatment in February 2018, which entailed a series of weekly group therapy meetings, AA meetings, and alcohol education. *Id.* at 73–74. However, he did not begin abstaining from alcohol until several months into his treatment program, testifying that he began abstaining in June 2018. *Id.* at 93. From February to June, he drank in moderation while reporting to the treatment program that he was abstaining. *Id.* at 141–42. Once he started abstaining, the Individual admitted to the treatment program that he had been consuming alcohol. *Id.* at 142.

In November 2018, abstinence became a condition of the Individual’s probation pursuant to a guilty plea for the October 2017 DWI. Tr. at 177. He remained abstinent until Thanksgiving, testifying that he consumed alcohol while feeling overwhelming grief following his youngest child’s death in November 2018. *Id.* at 105–07. He returned to abstinence, but again relapsed on Christmas. *Id.* at 107. His last drink was on December 29, 2018, and he called his outpatient treatment facility for assistance the next day. *Id.* The Individual contacted a grief counselor, who was still treating him at the time of his hearing. *Id.* at 107–09. The Individual testified that he intended to remain abstinent indefinitely. *Id.* at 155.

The clinical director supervised the Individual’s counselor. Tr. at 199. She testified that the Individual completed the treatment program in October 2018, with about four-and-a-half months of abstinence. *Id.* at 201. She testified that the Individual is attending weekly aftercare sessions in the wake of his relapse. *Id.* at 202. The clinical director opined that the Individual now recognizes his pattern of destructive alcohol consumption. *Id.* at 203. She also opined that the loss of his son was what made the Individual realize how dependent he was on alcohol and that before that tragedy, the Individual believed he would be able to return to moderate alcohol consumption. *Id.* at 205–06. The clinical director opined that the Individual had “turned a huge corner” in his recovery and was doing everything that he should in order to heal. *Id.* at 216. She testified that the Individual’s Alcohol Use-Disorder is not currently in remission because he has not been abstinent for three months. *Id.* at 217. She also testified that lack of candor is a common symptom of Alcohol Use Disorder and that the Individual can become more honest through recovery work. *Id.* at 220–21. She expressed concern at giving the Individual a good prognosis so early into his recovery. *Id.* at 227.

The Psychiatrist testified that the Individual’s positive blood tests in January indicate that he was drinking heavily during his relapse, very likely at levels higher than he reported. Tr. at 238–40. The Psychiatrist opined that loss of a child would be extremely trying for anyone and found it encouraging that the Individual had returned to sobriety in the face of such a great loss. *Id.* at 241–43. However, his prognosis was guarded, with potential for a good prognosis if the Individual continued his recovery program and could get past milestones, such as holidays or his child’s birthday, without relapse. *Id.* at 243. He opined that future relapse by the Individual was “not an unlikely event.” *Id.* at 245. The Psychiatrist testified that, in order to consider the Individual rehabilitated, he would need to see at least six months of abstinence, starting from the date of the last blood test, February 1, 2019. *Id.* at 249.

## 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 ¶ 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 restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

#### **A. Guideline G (Alcohol Consumption)**

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual has experienced great tragedy and the work he has done since his relapse is all the more difficult—and admirable—because of it. However, such tragedy is ongoing and I cannot be certain that he will not relapse again. As the Psychologist pointed out, holidays and birthdays will be challenging. Without remaining abstinent through at least a few of these challenging moments, the Individual cannot demonstrate a clear or established pattern of abstinence. Just over a month into his recovery, as he was at the time of the hearing, the Individual has demonstrated a willingness to work toward change, but I cannot find that he has mitigated the DOE’s concerns under Guideline G.

#### **B. Guideline E (Personal Conduct)**

Guideline E provides that the following conditions (in relevant part) may mitigate Personal Conduct security concerns: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) 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 not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and (3) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur. Adjudicative Guidelines at ¶ 17.

The Individual’s lack of candor is inextricably tied to his alcohol consumption. Until he is rehabilitated with regard to alcohol, his honesty and trustworthiness will be questionable to some degree. Accordingly, until the Individual has mitigated the DOE’s Guideline G concerns, I cannot find that he has mitigated the DOE’s Guideline E 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 not succeeded in fully resolving these concerns. Therefore, I cannot conclude that restoring 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 not restore 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.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals