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

In the Matter of: Personnel Security Hearing)
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Filing Date: August 15, 2019) Case No.: PSH-19-0046
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Issued: November 5, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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, “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.

I. BACKGROUND

After receiving information indicating that the Individual had received inpatient treatment for an alcohol disorder, and had been arrested for Driving Under the Influence of Alcohol (DUI) in 2007, a Local Security Office (LSO) asked the Individual to undergo an evaluation by a psychologist (the Psychologist). The Psychologist conducted a clinical interview (the Clinical Interview) of the Individual on April 29, 2019, and on May 5, 2019, he issued a report (the Report) concluding that the Individual met the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5) for Alcohol Use Disorder (AUD), Severe, and further opined that the Individual’s AUD was not in remission. Ex. 3 at 7. In addition, the LSO received derogatory information indicating that, on April 1, 2019, a judge had issued a restraining order (the RO) against the Individual as a result of his involvement in a domestic disturbance. On the basis of the Psychologist’s opinion, the Individual’s inpatient treatment, his DUI arrest, and the RO, the LSO began the present administrative review process. The LSO issued 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.

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.

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 on August 15, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his mother, present Supervisor (the Supervisor), current girlfriend (the Girlfriend), Licensed Clinical Social Worker (the LCSW) and the Psychologist. *See* Transcript of Hearing, Case No. PSH-19-0046 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as "Ex."). The Individual submitted 17 exhibits, marked as Exhibits A through Q.

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).

Under Guideline E, the LSO alleges that a Judge issued a restraining order to the Individual after he was found to have committed battery on a household member. This information adequately justifies the LSO's invocation of Guideline E and raises significant security concerns. 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. Guideline E at § 15. Among those conditions set forth in Guideline E that could raise a disqualifying security concern are: "[C]redible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, . . . unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to . . . any disruptive, violent, or other inappropriate behavior." Guideline E at §16(d)(2).

Under Guideline G, the LSO also alleges that the Individual has been diagnosed by the Psychologist with AUD, Severe, has been hospitalized for treatment of an alcohol disorder, and has been arrested for DUI. This information adequately justifies 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 (1) "alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder" (Guideline G at § 22(a)); (2) "diagnosis by a duly qualified medical or mental health professional (e.g. . . . psychologist. . .) of alcohol use disorder." (Guideline G at § 22(d)); (3) "failure to follow treatment advice once diagnosed; (Guideline G at § 22(e)); and (4) "alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder." (Guideline G at § 22(f)). These allegations adequately justify the LSO's invocation of Guideline G.

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).

Therefore, in order to obtain 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). 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

On May 27, 2007, the Individual was arrested and charged with DUI. Ex. at 2; Ex. 5 at 7. He pled guilty to this charge. Ex. 2 at 2.

From July 2, 2018, through July 14, 2018, the Individual was hospitalized for Acute Pancreatitis. Ex. 2 at 2. Ex. 5 at 1, 2, 4. During his hospitalization, he was advised by his attending physician to seek counseling for his "alcohol abuse." Ex. 2 at 2.

On July 17, 2018, the Individual voluntarily admitted himself to an inpatient facility for treatment of his alcohol disorder. Ex. 2 at 2. This hospitalization continued until August 7, 2018. Ex. 2 at 2. Upon discharge, the Individual was diagnosed with "Alcohol Dependence," and his prognosis was reported as "fair to good," provided he followed "all the recommendations of the Continuing Care Plan, as well as participating actively in a 12 Step program and working with a sponsor." Ex. 2 at 2; Ex. 6 at 3.

Subsequent to his discharge from the inpatient treatment facility, the LSO issued a Letter of Interrogatory (LOI) to the Individual. On October 19, 2018, the Individual submitted his responses to the LOI. In these responses, the Individual opined that he had benefited from his inpatient treatment because he had learned to sleep and manage his stress without using alcohol. Ex. 5 at 3. The Individual reported that he was not receiving treatment, medication, therapy, or counseling for his "alcohol use." Ex. 5 at 3. However, he did report that he was attending Alcoholics Anonymous

(AA) meetings and was no longer consuming alcohol. Ex. 5 at 3, 6. He stated that his last consumption of alcohol occurred on July 1, 2018, which resulted in his becoming intoxicated. Ex. 5 at 6. The Individual also indicated that he did not believe he had an alcohol problem. Ex. 5 at 10. Interrogatory No. 24 asked the Individual: “What are your future intentions toward the *excessive* use of alcohol?” Ex. 5 at 10 (emphasis added). The Individual responded by stating: “My dead honest intentions are to never go down that path again. I have learned that there are far better ways to deal with life’s stress, and I am enjoying life much more now.” Ex. 5 at 10.

On March 10, 2019, police were dispatched to the Individual’s residence after a domestic disturbance was reported. Ex. 9 at 4. The Individual’s now ex-girlfriend (the Ex-Girlfriend) reported to the officers that the Individual had “kicked her in the side.” Ex. 9 at 4. She further reported that the Individual had shoved her nephew, who was a small boy. Ex. 9 at 4. The Individual accused the Ex-Girlfriend of striking him and denied her allegations. Ex. 9 at 4. The officers filed no charges, finding: “Based on the inconsistent stories from both parties and lack of physical evidence there will be no charges filed in regards to this altercation.” Ex. 9 at 5.

On April 1, 2019, a Judge issued the RO requiring that the Individual: “Be restrained from committing further acts of abuse or threats of abuse” and “Be restrained from any contact with [his ex-girlfriend]” for a period of one year. Ex. 8 at 1. The RO states that: “Domestic Abuse was committed by [the Individual] that necessitates an order of protection.” Ex. 8 at 3. The RO also states: “The specific domestic abuse committed was Battery on a household member.” Ex. 8 at 3.

The Psychologist conducted the Clinical Interview on April 29, 2019, and issued a report (the Report) on May 5, 2019, concluding that the Individual met the criteria set forth in the DSM-5 for AUD, Severe. Ex. 3 at 7-8. He further opined that the Individual’s AUD was not in remission. Ex. 3 at 7-8. During the Clinical Interview, the Individual informed the Psychologist that he was attending AA meetings four or five times a week, and that he last used alcohol on March 12, 2019. Ex. 3 at 3. The Individual, during the Clinical Interview, expressed a “deep commitment”² to abstaining from alcohol use. As part of his evaluation, the Psychologist administered a Phosphatidylethanol (PEth) test to the Individual on April 29, 2019. Ex. 4 at 1. The test result indicated that the Individual had recently been engaging in heavy alcohol consumption, and was therefore inconsistent with the Individual’s assertion that he had not used alcohol since March 12, 2019. Ex. 3 at 3, 5. The Psychologist recommended that, in order to address his AUD, the Individual needs to permanently abstain from alcohol use. Ex. 3 at 7. The Psychologist further opined that the Individual should continue attending AA, obtain an AA Sponsor, and begin the AA’s 12-Step Program. Ex. 3 at 7. The Psychologist also recommended that the Individual consult with a psychiatrist in order to determine if medication would be useful. Ex. 3 at 7.

On September 26, 2019, approximately a week prior to the Hearing, the Individual met with the LCSW for an initial evaluation. Ex. A at 1. On September 28, 2019, the LCSW issued a report of her findings from that assessment (the Assessment). Ex. A at 1. The LCSW did not provide a diagnosis in the Assessment, but she did opine that the Individual should “continue weekly therapy sessions as a continuation of his assessment and treatment,” “return to weekly (minimum) AA meetings,” and obtain a sponsor. Ex. A at 2. On October 7, 2019, the LCSW issued an addendum

² The Individual attributed his commitment to permanent abstention from alcohol use to his work in AA. Ex. 3 at 3.

to the Assessment. Ex. M at 2. In this addendum, she stated: “While I do agree with [the Psychologist’s] assessment, [the Individual] reports he has not had alcohol since April 2019 and does not report any desire to drink. It is my professional opinion that [the Individual] currently meets only three of the criteria for Alcohol Use Disorder.” Ex. M at 2.

On October 2, 2019, the Individual submitted Exs. E, F, G, H, I, J, and L, which he claims are screen shots text messages from his Ex-Girlfriend purportedly showing that she was undergoing counseling and had been prescribed psychiatric medications.

On October 2, 2019, (the day prior to the hearing) the Individual underwent a PEth test. Ex. P. That test was negative. Ex. P at 1.

On October 14, 2019, an individual wrote a letter indicating that he now serves as the Individual’s AA sponsor. Ex. Q at 1. He further indicated that the Individual plans to begin AA’s 12-Step Program.

The Hearing

At the hearing, the Individual attempted to mitigate the security concerns arising under Guideline E by indicating that he had not engaged in any inappropriate behavior during the incident that led to the issuance of a restraining order against him. The Individual addressed the security concerns arising under Guideline G by showing that he: now has a strong support system, has been abstaining from alcohol use since April 2019, has begun individual counseling, has obtained an AA Sponsor, and intends to begin AA’s 12-Step Program.

The Individual’s mother testified on his behalf at the hearing. She testified that she speaks with the Individual on a daily basis. Tr. at 16. She testified that she became aware of her son’s alcohol concerns when he was hospitalized for pancreatitis. Tr. at 19-20. She then urged him to seek treatment. Tr. at 20-21. She has not observed her son using alcohol since his treatment. Tr. at 21-22. The Individual told her that he intends to permanently abstain from alcohol use. Tr. at 22-23, 38. The last time she observed the Individual use alcohol was on his birthday in March 2019. Tr. at 25. She is aware that he used alcohol in April of that year as well. Tr. at 25. She has observed that the Individual did not use alcohol when he attended family functions where alcohol was served. Tr. at 23, 37. She also testified that she has attended an AA meeting with her son. Tr. at 23. The Individual’s mother testified that the Individual has a large and close-knit family that is there to support him. Tr. at 24-25.

Regarding the incident resulting in the issuance of the RO, the Individual’s mother reported that the Individual had called her after the incident with his ex-girlfriend. Tr. at 26. However, she further testified that the Individual “didn’t really go into detail that night.” Tr. at 27. Nonetheless, the Individual’s mother stated that the Individual had engaged in a physical altercation with his ex-girlfriend. Tr. at 26. The Individual had reported to her that he “was blocking her physical attack.” Tr. at 26. When she questioned him later, he denied striking his ex-girlfriend. Tr. at 27. The Individual’s mother testified that the Individual has had many girlfriends and has never been involved in any domestic violence other than this incident. Tr. at 28. She testified that this incident would be out of character for him. Tr. at 28. The Individual’s mother testified that the Individual informed her that he had been using alcohol on the night of the incident. Tr. at 28. When the

Individual examined her about that statement, she equivocated and indicated that she “could easily be mistaken.” Tr. at 31. She also acknowledged that the incident occurred on the weekend of the Individual’s birthday. Tr. at 31. The Individual’s mother further testified that, even prior to the incident, she thought that the Individual’s relationship with his ex-girlfriend was unhealthy for him and had informed him of her opinion. Tr. at 34. She testified that her son realizes that he has a problem with alcohol and that her son was receiving pastoral counseling. Tr. at 36, 38.

The Supervisor testified on the Individual’s behalf at the Hearing. He testified that he occasionally socializes with the Individual at work-related social functions. Tr. at 44-45. He testified that, about a year ago, the Individual began having attendance issues. Tr. at 45. He also became aware of the Individual’s alcohol issues as a result of his hospitalization. Tr. at 46. In hindsight, the Supervisor believes that the Individual’s alcohol problem may have affected his performance at work. Tr. at 47. After the Individual received inpatient treatment, he noticed a change for the better. Tr. at 47. The Individual has been open with the Supervisor about his alcohol issues and has stated that he intends to permanently abstain from alcohol use. Tr. at 48. The Individual no longer has attendance issues. Tr. at 52. The Supervisor testified that the Individual is honest and not a violent or volatile person. Tr. at 53-54.

The Girlfriend testified on the Individual’s behalf. She testified that she has known the Individual for 20 years. Tr. at 58. Their relationship has recently become romantic, and they have been cohabitating since June 2019. Tr. at 58. She testified that the Individual had informed her about his alcohol issues and treatment. Tr. at 60. She stated that the Individual has not used alcohol since they started cohabitating and he intends to permanently abstain from using alcohol. Tr. at 60, 64-65. She testified that the Individual is currently in counseling and that she attends AA meetings with him. Tr. at 60. The Individual also attends AA meetings without her. Tr. at 61. The Girlfriend testified that she has attended at least 15 AA meetings with the Individual. Tr. at 61. She testified that the Individual attends counseling on a weekly basis. Tr. at 60-61. She believes that AA is helping the Individual. Tr. at 61. The Girlfriend does not use alcohol nor do they have alcohol in their home. Tr. at 62, 64. She testified that the Individual frequently refuses invitations to use alcohol. Tr. at 68.

The LCSW testified on the Individual’s behalf at the Hearing. She testified that she does not specialize in treating alcohol or substance abuse disorders. Tr. at 82. She had assessed the Individual approximately one week prior to the Hearing and agrees that the Individual has AUD. Tr. at 83-85-86, 97. She further testified that she believes his AUD is in remission. Tr. at 100. The LCSW believes that the Individual understands that he cannot use alcohol and that his life is easier without alcohol in it. Tr. at 86-87. She opined that the Individual should return to participating in AA and that the Individual agrees with this recommendation. Tr. at 87, 89, 96. The LCSW also opined that the Individual should obtain a sponsor. Tr. at 94. The Individual indicated to her that his last uses of alcohol occurred on his birthday (in March 2019) and in July of 2019. Tr. at 88. The Individual has agreed to attend weekly counseling sessions with her. Tr. at 89. The LCSW testified that she believes that he is highly likely to succeed in remaining sober if he continues on his present path. Tr. at 90-91. She testified that the Individual acknowledges his alcohol problem and has demonstrated insight into it. Tr. at 94-95, 99. When she was asked about the current state of the Individual’s recovery, the LCSW stated:

I mean he appears to be doing really well with it in terms of what he's self-reported. . . . [H]e's in a healthier relationship. He's attending church on a regular basis and classes. He has a support system within his community with neighbors . . . and family support. . . . I think that for right now, . . . I agree with [the Psychologist] in that I recommend that he increase that support system outside of those models in order to attend some AA meetings and to really come to a deeper understanding for him.

Tr. at 96-97. The LCSW further opined that she has "a lot of confidence" in the Individual. Tr. at 97.

During the Hearing, the Individual admitted that he could not control his drinking in the past, and described himself as "an alcoholic." Tr. at 145. The Individual testified that he now has a large support network, which includes his neighbors, his family, his coworkers and AA. Tr. at 76-77, 146. The Individual testified that he has been prescribed Gabapentin, which effectively controls his anxiety. Tr. at 149. He stated that he began experiencing depression symptoms in May 2018, after finalizing a divorce in March 2018. Tr. at 106-107. He began dating his ex-girlfriend in May 2018. Tr. at 108. His ex-girlfriend and her friends and family were heavy drinkers. Tr. at 108. His drinking progressed to the point where it harmed his physical health. Tr. at 111. He was then hospitalized for pancreatitis, and was informed by the medical staff that he needed treatment for his alcohol problem. Tr. at 114, 117. That led him to seek inpatient treatment. Tr. at 118.

After he left the inpatient facility, the Individual began attending AA, began attending church, and broke up with his ex-girlfriend.³ Tr. at 121. He also resolved to permanently abstain from alcohol use. Tr. at 121. He obtained an AA sponsor shortly after leaving the inpatient facility, "but it did not feel right," and he stopped working with his sponsor. Tr. at 122. The Individual testified that he had not stopped AA, however, noting that he and his Girlfriend had attended an AA meeting together a few days before the hearing. Tr. at 120, 123, 153. However, he is not currently working AA's 12-Step Program. Tr. at 153. He testified that he is considering obtaining a new sponsor. Tr. at 123. The Individual admitted that he used alcohol on December 31, 2018, March 12, 2019, and on the weekend after receiving his restraining order (April 6 and 7 of 2019). (Tr. at 125, 127, 139, 155). He testified that he has not consumed any alcohol since April 7, 2019. Tr. at 143. He denied using alcohol on March 10, 2019, the day of the incident with his Ex-Girlfriend. Tr. at 127. He claimed that his ex-girlfriend had lied to the police when she reported that he had been using alcohol prior to the incident. Tr. at 128. He claimed that the restraining order's conclusion that he committed battery was inaccurate. Tr. at 129. The Individual claimed that his Ex-Girlfriend initiated the incident when she started screaming and throwing things. Tr. at 129. At that point, he testified, he asked her to leave his home. Tr. at 129. He testified that "And I am kind of leading her to the door in a somewhat forceful manner, but not a harmful manner. It's just get out the door, please kind of thing." Tr. at 129. The Ex-Girlfriend then called the police from a residence across the street. Tr. at 129. The Individual stated that the Ex-Girlfriend told the police that he had pushed her son, which the Individual denied. Tr. at 191. The Individual stated that the Judge who issued the RO informed him that: "Me forcing [the Ex-Girlfriend] out of the house was--that was battery. And I still don't get it." Tr. at 134.

³ He later returned to this relationship. Tr. at 121.

The Psychologist testified after observing all of the other hearing testimony. He testified that he had diagnosed the Individual with AUD, Severe, after finding that the Individual met six of the criteria for AUD set forth in the DSM-5. Tr. at 161-162. At the time of the report, he found that the Individual was not in remission because the PEth test showed that he had been consuming alcohol recently. Tr. at 162-164. He continues to believe that the Individual has AUD, Severe, and is not in full sustained remission, since the Individual needs to completely abstain from alcohol use for at least 12 months before he can be considered to be in full sustained remission. Tr. at 166-167. He noted that the Individual has only been fully abstaining from alcohol use for five or six months. Tr. at 167. He also noted that the Individual has not obtained a sponsor nor has he begun working the AA 12-Step Program. Tr. at 166. When asked about the Individual's prognosis, the Psychologist stated "I suspect he will do well." Tr. at 167. However, the Psychologist testified that the Individual has not shown that he is rehabilitated or reformed. Tr. at 169. He testified that he was not confident that the Individual was doing everything he needs to be doing in order to achieve his sobriety. Tr. at 169.

V. ANALYSIS

Guideline E (Personal Conduct) Concerns

The Individual's involvement in an incident which resulted in a restraining order being issued to him after he was found to have committed battery on a household member raises security concerns under Guideline E. Adjudicative Guidelines at § 16(d)(2). The Adjudicative Guidelines set forth seven conditions which may provide mitigation of security concerns arising under Guideline E. Of these conditions, only Sections 17(c), 17(d), and 17(f) arguably apply to circumstances existing in the present case.

Section 17 (c) provides that mitigation may occur if "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." The incident in question is clearly not minor, and occurred approximately seven months prior to the hearing. While I am convinced that the Individual is unlikely to engage in further domestic violence, the Individual's continuing insistence that the altercation between him and his ex-girlfriend was solely her fault, and due to her alleged mental illness, continues to cast doubt upon his reliability, trustworthiness, or good judgment. While it is possible that the Individual's account of this incident is accurate rather than the account provided by his Ex-Girlfriend, I note that the Individual bears the burden of showing that he did not commit a battery. He has not met this burden. A Judge heard testimony from both the Individual and his girlfriend at a hearing at which the Individual had been represented by counsel, and concluded that the Individual had committed a battery. Moreover, the record shows that the Judge accepted the Individual's account of the incident and determined that the Individual had committed a battery, and the Individual's testimony at the hearing, indicating that he did not understand why his actions during the incident were inappropriate, indicated that he has little insight into his own behavior that evening. Tr. at 134. Accordingly, I find that Section 17(c) does not provide any mitigation for the Individual.

Section 17(d) provides that mitigation may occur if "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.” While the Individual has recently entered into counseling, he does not yet acknowledge that his behavior contributed to the incident which led to the RO. Accordingly, I find that Section does not provide any mitigation for the Individual.

Section 17(f) provides that mitigation may occur if: “the information was unsubstantiated or from a source of questionable reliability.” While the Individual claims that he was falsely accused of battery, the court’s judgment indicates otherwise. Accordingly, I find that Section (f) does not provide any mitigation for the security concerns arising from the restraining order issued to the Individual.

Accordingly, I find that the Guideline E security concerns arising from the Individual’s involvement in an incident which resulted in the RO have not been resolved.

Guideline G (Alcohol Consumption) Concerns

The Adjudicative Guidelines provides four conditions that can mitigate security concerns arising under Guideline G. None of these conditions are sufficiently present in the instant case.

Section 23(a) provides that mitigation may occur 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 judgment.” The Individual’s AUD is a lifelong disorder, from which he has relapsed on several occasions, at least as recently as April 2019, six months before the hearing. Accordingly, I am not convinced that his AUD is unlikely to recur.

Section 23(b) provides that mitigation may occur if: “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.” The Individual acknowledges that he is an “alcoholic.” He has taken a number of steps in order to address his AUD, including inpatient treatment, and becoming involved in AA. Very recently, within weeks of his hearing, he entered into individual counseling, obtained a sponsor,⁴ and indicated that he plans to start the AA’s 12-Step Program. However, at the time of the hearing, he demonstrated a pattern of abstinence only of approximately six months. Given the severity of the Individual’s AUD, and his history of at least three relapses since his discharge from the inpatient facility, I am not of the opinion that the Individual’s pattern of abstinence is yet “clear and established.” This is especially so given the Individual’s reluctance, until very recently, to fully engage in AA, and to obtain individual counseling.

Section 23(c) provides that mitigation may occur if: “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.” The Individual has a significant history of treatment and relapse.

⁴ The Individual obtained this sponsor subsequent to the hearing.

Section 23(d) provides that mitigation may occur if: “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.” As I have discussed above, I am not of the opinion that the Individual’s pattern of abstinence is yet “clear and established.”

Having concluded that the Individual has not met any of the mitigating conditions under Guideline E or Guideline G, I conclude that the Individual has not resolved the security concerns asserted by the LSO.

VI. CONCLUSION

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