

Psychologist issued a psychological assessment (Report) in which she concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 6 at 7.

On September 25, 2019, the LSO issued the Individual a letter in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted ten numbered exhibits (Ex. 1–10) into the record. The Individual submitted two exhibits (Ex. A–B). The LSO presented the testimony of the DOE Psychologist and the Individual presented the testimony of five witnesses, including his own testimony.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for denying the Individual a security clearance. Ex. 1. Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Summary of Security Concerns listed as relevant facts: the DOE Psychologist determined that the Individual met the diagnostic criteria for AUD, Moderate, under the *DSM-5*; the Individual was arrested and charged with DUI by Consent in 2007; the medical records obtained from the Treatment Facility indicated that the Individual admitted to personnel from the Treatment Facility that he routinely consumed alcohol until he passed out, that he did not comply with the aftercare recommended by the Treatment Facility after his discharge, and that he did not respond to check-in calls from the Treatment Facility; and, the Individual admitted to having relapsed after treatment at the Treatment Facility. Ex. 1. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work, was diagnosed with AUD, Moderate, by the DOE Psychologist, failed to follow treatment advice once diagnosed by the Treatment Facility, and consumed alcohol against treatment recommendations after a diagnosis of AUD justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d)–(f).

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.

IV. FINDINGS OF FACT

The Individual submitted the e-QIP on March 21, 2018, and disclosed his treatment at the Treatment Facility and arrest for DUI by Consent. Ex. 8 at 33–34, 36–37. During his July 2018 interview with the OPM investigator, the Individual indicated that he had sought treatment after his wife expressed a desire for him to stop drinking and he realized that he could not do so on his own. Ex. 10 at 62. The Individual reported that he participated in a thirty-day inpatient program at the Treatment Facility from September to October of 2016, and that he had abstained from alcohol since his release from the program. *Id.* The Individual volunteered to the OPM investigator that he was attending Alcoholics Anonymous (AA) meetings and that he attended AA meetings “to feel the support of other people and to strengthen his resolve to abstain from the use of alcohol.” *Id.* at 62–63.

OPM conducted a second interview of the Individual on October 22, 2018, at which time the Individual admitted that he had previously abused opiate painkillers prescribed to him for a chronic condition, and that he had turned to alcohol to dull the pain he was experiencing after he developed a tolerance to the painkillers. *Id.* at 63. An OPM investigator interviewed the Individual’s wife (hereinafter referred to as the “Individual’s ex-wife”) on November 1, 2018, who indicated that she and the Individual had divorced in September 2018. *Id.* at 74. The Individual’s ex-wife reported that the Individual had developed a problem with alcohol in 2017, which she defined as consuming “three or more drinks in a sitting.” *Id.* Contrary to the Individual’s account, the Individual’s ex-wife denied that the Individual was drinking as a substitute for opiate pain killers. *Id.* at 75. The Individual’s ex-wife also indicated that she did not believe that the Individual was an alcoholic, denied that the Individual’s drinking had a negative impact on his relationship with their two children, and said that she did not believe that the Individual had a problem with alcohol at that time. *Id.* at 75–76. The Individual’s ex-wife expressed concern to the OPM investigator that she was portraying the Individual too negatively, and indicated that she did not want him to lose his job. *Id.* at 76.

The LSO obtained medical records from the Treatment Facility which indicated that the Individual was diagnosed with “Alcohol Dependence” and his prognosis was assessed as “fair.” *See* Ex. 6 at 4 (summarizing the medical records). After his discharge from the Treatment Facility, the Individual did not attend recommended aftercare or respond to check-in calls from the Treatment Facility. *Id.*

On May 9, 2019, the Individual met with the DOE Psychologist for a clinical interview. *Id.* at 2. During the clinical interview, the Individual described how his drinking had increased in 2012 or 2013 when he started using alcohol to manage pain associated with a chronic medical condition. *Id.* at 3.² According to the Individual, his drinking increased further after he developed a tolerance to opiates prescribed to him for pain management and he would routinely drink until he “fell asleep” when he ran out of medication. *Id.* at 3. The Individual reported that he tried unsuccessfully to stop drinking and taking opiates in higher doses than prescribed, and entered into treatment at the Treatment Facility after his wife threatened divorce. *Id.*

The Individual told the DOE Psychologist that he had tried meeting with a counselor through an employee assistance program after his discharge from the Treatment Facility, but stopped after approximately ten sessions because he felt that meeting with the counselor “made things worse.” *Id.* The Individual also told the DOE Psychologist that he had attended some AA meetings, but had discontinued attendance because he felt guilty about losing time he could have spent with his children. *Id.* at 4.

The Individual admitted to the DOE Psychologist that he had resumed drinking in July or August of 2017, contrary to his statement to the OPM investigator, and consumed alcohol to intoxication approximately weekly until August of 2018. *Id.* at 5–6. The Individual described that, when he consumed alcohol, “if it was there, I’d drink it until it was gone.” *Id.* at 6. The Individual could not recall why he resumed drinking, but speculated that his divorce from his wife might have been a contributing factor. *Id.* at 5. The DOE Psychologist ordered two alcohol tests for the Individual: a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test, both of which were negative. *Id.* According to the medical doctor who provided the test results to the DOE Psychologist, the EtG test results showed that the Individual had not consumed alcohol for at least three days prior to the test, and the PEth test results provided evidence that the Individual had not been drinking on a regular, heavy basis for several weeks prior to the test. *Id.* at 11.

On May 19, 2019, the DOE Psychologist issued her Report in which she concluded that the Individual met the diagnostic criteria for AUD, Moderate, under the *DSM-5*. Ex. 6 at 7. The DOE Psychologist explained that the Individual met five criteria for AUD in the prior twelve months: (1) alcohol is often taken in larger amounts or over a longer period than was intended; (2) persistent desire or unsuccessful efforts to cut down or control alcohol use; (3) craving, or a strong desire or urge to use alcohol; (4) continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol; and (5) alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol. *Id.* at 6. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for at least twelve months, undergoing random EtG tests and at least two PEth tests for twelve months, and participating in AA or a comparable in-person alternative on a weekly basis for twelve months. *Id.* at 7–8.

² Notably, the Individual decided to consume alcohol despite the fact that alcohol consumption often causes negative side effects in patients with the Individual’s chronic medical condition. Ex. 6 at 5.

V. HEARING TESTIMONY

The Individual's ex-wife testified at the hearing that she believed that the Individual had abstained from alcohol for over one year as of the date of the hearing, and that the Individual had resolved his drinking problem. Tr. at 10. The Individual's ex-wife recounted that the Individual hid his drinking from her during the last year of their marriage and that his drinking created marital and family problems. *Id.* at 11, 14. The Individual's ex-wife testified that she believed that the Individual had begun abstaining from alcohol around the time that the couple separated, that she sees the Individual multiple times each week and had not observed any indications that the Individual was intoxicated, noticed that the Individual was more involved with their children, and perceived the Individual as being "nicer" since their separation. *Id.* at 9, 14–15, 17.

The Individual's father testified that, while he had not seen the Individual consume alcohol in many years, he had expressed concerns to the Individual about alcohol in the past because of his own experience abusing alcohol. *Id.* at 29–30. The Individual's father indicated that the Individual had told him that he had stopped drinking and that his last drink was shortly after his divorce from his ex-wife. *Id.* at 32. The Individual's father also said that the Individual had attended AA for some time after his divorce, but had stopped because he felt worse after going to meetings than he had before. *Id.* at 32–33. The Individual's father testified that the Individual had told him that he did not plan to drink any alcohol in the future. *Id.* at 33.

A co-worker of the Individual testified that the Individual was a reliable person who always followed rules and security procedures. *Id.* at 37–38. However, the co-worker indicated that he had not socialized with the Individual outside of work in approximately six years. *Id.* at 41. The Individual's ex-father-in-law testified that he saw the Individual on a weekly basis because he provides childcare for the Individual and his ex-wife, and expressed his belief that the Individual was a trustworthy and responsible person. *Id.* at 43–44, 46–47.

The Individual testified that he believed that he previously had a problem with binge drinking but no longer had a problem with alcohol. *Id.* at 49. The Individual explained that he was abstaining from alcohol, had disassociated from friends who consumed alcohol around him, and avoided places and activities, such as grilling outside, that made him think of alcohol. *Id.* at 49.

The Individual recounted how he had developed a tolerance to opioids prescribed to him to manage pain associated with his chronic health condition, began taking the medication in larger doses than prescribed to increase their effectiveness, and resorted to consuming alcohol to manage his pain when he ran out of medication before he could refill his prescription. *Id.* at 52. According to the Individual, when he was at home and did not have to go to work the next day he would drink "whatever was [] around" and that he tried to minimize the amount of alcohol in the home to reduce his temptation to drink. *Id.* at 53. The Individual admitted that, at times, he consumed alcohol until he passed out. *Id.*

The Individual opined that the treatment at the Treatment Facility had helped him to refrain from using opioids, but that he had not been successful at abstaining from alcohol. *Id.* at 54–55. The Individual indicated that he "thought that [he] was better . . . [and] could handle [himself] again" by drinking one or two drinks in a sitting, but found that he could not stop himself from consuming

greater quantities of alcohol when he started drinking. *Id.* at 55. The Individual explained that this experience had led him to conclude that he could not safely drink any alcohol in the future. *Id.*

The Individual asserted that he had attended AA meetings after his discharge from the Treatment Facility, but found that it was too difficult to balance the meetings with his work and family obligations and that he found the meetings more stressful than helpful. *Id.* at 56–58. According to the Individual, hearing others talk about their struggles with alcohol made him think about drinking more than when he did not go to the meetings and hindered his efforts “to move forward.” *Id.* at 57. The Individual testified that he likewise found the aftercare recommended by the Treatment Facility too difficult to balance with his other obligations. *Id.* at 56–58, 61–62. The Individual indicated that he had attended recovery meetings at his church which he found helpful, but that they were too lengthy to attend regularly. *Id.* at 59.

The Individual initially testified that he had last consumed alcohol in November of 2017, but revised that testimony to indicate that his last drink was in November of 2018. *Id.* at 64, 74.³ Prior to this date, the Individual characterized his drinking as “binging” and indicated that he “didn’t have a stop in [him]” once he started drinking. *Id.* at 63. The Individual admitted that he may have misrepresented his drinking to the OPM investigator to “paint himself in a good [light],” but expressed that he could not remember what he had said during the interview. *Id.* at 62. The Individual also expressed that he could not recall telling the DOE Psychologist that he last consumed alcohol in July or August of 2018. *Id.* at 64.

The Individual expressed that he intended to permanently abstain from alcohol. *Id.* at 67. The Individual admitted that he had expressed the same intention after leaving treatment at the Treatment Facility, only to relapse into problematic drinking, but asserted that the circumstances were different now because he had come to realize the impact of his drinking on his family, job, and health. *Id.* Moreover, the Individual attributed his drinking problems in part to the breakdown of his marriage, and opined that it was easier to abstain from alcohol now that he was divorced. *Id.* at 77. The Individual expressed that he felt better abstaining from alcohol, that his relationships with family members had improved, and that focusing on his religious beliefs helped him to deal with issues in his life better than alcohol. *Id.* at 68–69. The Individual described his support system as his family, a close personal friend,⁴ and his religion. *Id.* at 73.

The Individual expressed his opinion that he could manage his abstinence on his own, and that it was not necessary for him to follow the recommendations of the Treatment Facility or the DOE Psychologist. *Id.* at 69, 79–80. The Individual expressed, however, that had the Treatment Facility or DOE Psychologist framed their recommendations as requirements to keep his clearance, he would have taken whatever action was necessary. *Id.* at 80–81, 83–86.

³ The Individual initially testified that he had last consumed alcohol in November of 2017, expressed that he “knew exactly when [he] had [his] last drink,” testified that it had been “years” since he “grilled out” so that he would not be tempted to consume alcohol, and said it had been “ages” since he last consumed or craved alcohol. Tr. at 49, 61, 64–66. The Individual maintained that he last consumed alcohol in November 2017 even after being questioned about this date being inconsistent with the information in the DOE Psychologist’s Report. *Id.* at 65. The Individual revised his testimony only after his ex-wife prompted him to reconsider the date in question. *Id.* at 74.

⁴ The friend identified by the Individual did not testify at the hearing or provide any information in support of the Individual’s appeal.

The DOE Psychologist testified last, after observing the hearing and all of the testimony offered therein. The DOE Psychologist expressed that she believed that the Individual had abstained from alcohol for over one year and understood that he could not drink any alcohol in the future, and therefore opined that the Individual had demonstrated rehabilitation even though the Individual had not followed the recommendations in her Report. *Id.* at 94–96, 99. However, the DOE Psychologist expressed that the Individual’s failure to undergo continued testing that could have objectively demonstrated his ongoing abstinence, or to attend AA or a comparable program that could have offered him a formal support system, left her with doubts as to his accountability. *Id.* at 95–96.

The DOE Psychologist opined that that Individual’s attribution of reasons for not attending AA to others, and his unwillingness to follow treatment recommendations, reflected a resistance to acknowledging his AUD as an ongoing problem. *Id.* at 96–97. The DOE Psychologist submitted that, in the absence of a formal support system and in light of the Individual’s resistance to acknowledging the ongoing nature of his alcohol problem, he remained at moderate risk of relapse into problematic drinking. *Id.* at 95–97. The DOE Psychologist gave the Individual a “fair” prognosis, but noted that the Treatment Facility had given the Individual the same prognosis before he relapsed into problematic drinking. *Id.* at 102.

VI. ANALYSIS

A. Guideline G

The Individual’s alcohol-related incident away from work, diagnosis of AUD, Moderate, by the DOE Psychologist, failure to follow treatment advice once diagnosed by the Treatment Facility, and consumption of alcohol against treatment recommendations after a diagnosis of AUD raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (d)–(f). The Individual did not contest any of the facts set forth in the Statement of Security Concerns or the DOE Psychologist’s Report. Tr. at 49–50. However, the Individual asserted that he had discontinued alcohol use and that returning to using alcohol was “not an option” for him. *Id.* at 75.

An individual may mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,

- (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.

Adjudicative Guidelines at ¶ 23(a)–(d).

The Individual has not satisfied the first mitigating condition because the circumstances giving rise to the security concerns cast significant doubt on the Individual's trustworthiness and judgement, and I am not convinced that they are unlikely to recur. The Individual was not truthful to the OPM investigator when he told him that he had abstained from alcohol since his discharge from the Treatment Facility and was actively attending AA meetings. The Individual initially claimed during the hearing that he had abstained from alcohol since November 2017, and only revised that testimony to November 2018 after prompting from his ex-wife. Both of those dates conflict with the Individual's representation to the DOE Psychologist that he last consumed alcohol in the summer of 2018. In light of the Individual's inconsistency in reporting his alcohol consumption, and the lack of alcohol testing following the PEth test recommended by the DOE Psychologist to objectively prove that the Individual has abstained from alcohol on an ongoing basis, I cannot confidently determine when the Individual last consumed alcohol. Moreover, in light of the Individual's misrepresentations to the OPM investigator when he perceived that his clearance was at risk, I am not confident that the Individual can be trusted to accurately report his alcohol consumption or to come forward if he experiences a relapse. Therefore, I conclude that the first mitigating condition under Guideline G is inapplicable in this case. *Id.* at ¶ 23(a).

The above considerations also lead me to conclude that the second mitigating condition is not applicable in this matter. The burden of proof rests with the Individual to prove that he has "demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations," but his inconsistent testimony, prior efforts to hide his drinking from his ex-wife and the OPM investigator, and the lack of laboratory evidence of his abstinence from alcohol cause me to conclude that he has not met this burden. Moreover, the Individual does not acknowledge that he has a current problem with alcohol and has failed to demonstrate accountability by seeking resources to help him control his alcohol problem, both of which factors led the DOE Psychologist to conclude that the Individual is at a moderate risk of relapse. For these reasons, I find that the second mitigating condition under Guideline G is inapplicable. *Id.* at ¶ 23(b).

The remaining two mitigating conditions are also not applicable. The Individual is not participating in counseling or treatment, relapsed after treatment at the Treatment Facility, did not complete the aftercare recommended by the Treatment Facility, and has not demonstrated a clear and established pattern of modified consumption or abstinence. *Id.* at ¶ 23(c)–(d).

For the reasons set forth above, I find that none of the mitigating conditions under Guideline G are applicable to this matter. Therefore, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals