

interview of the Individual, the DOE Psychiatrist issued a psychiatric assessment (Report) in which he opined that the Individual habitually consumed alcohol to the point of impaired judgment, binge consumed alcohol to the point of impaired judgement, or both. Ex. 9 at 7.

On November 18, 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 twelve numbered exhibits (Ex. 1–12) into the record. The Individual did not submit any exhibits.³ The LSO presented the testimony of the DOE Psychiatrist 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 Psychiatrist determined that the Individual habitually consumed and binge consumed alcohol to the point of impaired judgement; and, the Individual was arrested and charged with DWI in 1981, 2001, and 2004. Ex. 1. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work, and habitually and binge consumed alcohol to the point of impaired judgement, justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

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).

³ During a pre-hearing conference call, the Individual expressed the intention to submit letters of support from co-workers that he had included with his request to the LSO for an administrative review hearing. I explained to him that the LSO had already submitted the letters as part of DOE Ex. 2, and that it was not necessary for him to submit the records into evidence again.

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 November 22, 2016, and disclosed his three arrests for DWI in 1981, 2001, and 2004. Ex. 11 at 40–43, 52. In his response to the LOI, the Individual acknowledged each of the instances in which he was arrested for DWI but asserted that he no longer “dr[a]nk to the point of such intoxication.” Ex. 8 at 5. According to the Individual in his response to the LOI, he had consumed an average of one to two 12-ounce or 16-ounce beers on two or three occasions per week during the prior ten years. *Id.* at 1.

On April 18, 2019, the Individual met with the DOE Psychiatrist for a clinical interview. Ex. 9 at 1. During the clinical interview, the Individual reported that alcohol had been a problem for him in the past but was not any longer. *Id.* at 4. The Individual indicated that he did not crave alcohol, experience feelings of being unable to stop drinking after he started, or otherwise observe any negative effects from alcohol in his life. *Id.*

The Individual told the DOE Psychiatrist that he typically consumed two drinks per sitting twice per week. *Id.* at 3. The Individual reported that he last consumed alcohol the night prior to the clinical evaluation when he had a margarita and a 12-ounce beer with dinner. *Id.* In order to objectively assess the Individual’s alcohol consumption, the DOE Psychiatrist recommended that the Individual provide a blood sample for a phosphatidylethanol (PEth) test to measure the presence of the PEth biomarker in the Individual’s blood. *Id.* at 6. The results of the PEth test were positive at a level of 239 nanograms per milliliter (ng/mL). *Id.* According to the DOE Psychiatrist, a PEth level of 239 ng/mL is consistent with consuming an average of approximately sixty grams of alcohol (about four drinks) daily. *Id.*

In light of the laboratory evidence that the Individual was consuming significantly greater quantities of alcohol than he had reported in the clinical interview and in his response to the LOI, the DOE Psychiatrist concluded that the Individual was habitually consuming alcohol to the point of impaired judgement, binge drinking, or both. *Id.* The DOE Psychiatrist recommended that the Individual demonstrate rehabilitation or reformation by: (1) abstaining from alcohol for at least one year; (2) undergoing monthly PEth testing to provide evidence of his abstinence from alcohol; (3) participating in an outpatient counseling program on a weekly basis for at least three months followed by an aftercare program for at least nine months; and (4) participating in Alcoholics Anonymous (AA) on an at least weekly basis for one year. *Id.* at 6–7.

V. HEARING TESTIMONY

A co-worker of the Individual who sees the Individual frequently at work, and approximately weekly outside of work, testified that he believes that the Individual is a reliable and consistent person. Tr. at 33–34. According to the co-worker, the Individual demonstrated his good character through conscientiousness at work and mentoring of younger employees. *Id.* at 33–34, 36–37. The co-worker testified that he had never observed the Individual under the influence of alcohol, and that the Individual had told him that he had stopped drinking alcohol. *Id.* at 30, 37.

Two other co-workers of the Individual who saw him regularly at work, but who did not associate with the Individual outside of work, testified that they believed that the Individual was a dependable person and good worker. *Id.* at 10, 13, 42–44. Both of the co-workers indicated that the Individual had told them that he had stopped consuming alcohol several months prior to the hearing, and both co-workers denied ever observing the Individual under the influence of alcohol at work. *Id.* at 11–12, 43–44. Two other co-workers submitted letters of recommendation in which they indicated that the Individual was a good worker and reliable person. Ex. 2 at 2–3.

The Individual's supervisor testified that he last observed the Individual consume alcohol approximately four months prior to the hearing when he, the Individual, and several of their co-workers went to a bar after work. Tr. at 20–21. The supervisor recalled that the Individual consumed three craft beers in approximately ninety minutes and did not appear intoxicated. *Id.* at 21. The Individual's supervisor testified that he had never observed the Individual engage in problematic drinking. *Id.* at 22.

The Individual testified that he stopped consuming alcohol approximately three months prior to the hearing because he was concerned about losing his job if he did not obtain a security clearance and because he wanted to improve his health. *Id.* at 50–51. The Individual testified that he believed that he had accurately reported his drinking levels in his response to the LOI and during the clinical interview with the DOE Psychiatrist, and asserted that he consumed two to three beers after work two to three days each week until November 2019 when he said that he began abstaining from alcohol. *Id.* at 48–50.

The Individual acknowledged that he had not followed the DOE Psychiatrist's recommendations with respect to pursuing treatment and attending AA meetings, and asserted that he did not believe that it was necessary for him to do so if he could abstain from alcohol on his own without help. *Id.* at 54–55. The Individual also acknowledged that he had waited for approximately six months after receiving the DOE Psychiatrist's Report to begin abstaining from alcohol, and testified that he did so because the Report did not say that he should begin abstaining immediately. *Id.* at 59–61. The Individual asserted that he had disassociated from alcohol-using friends, no longer went to bars or other alcohol-focused establishments, and intended to abstain from alcohol in the future. *Id.* at 56–57, 63.

The DOE Psychiatrist testified last, after observing all of the other testimony offered during the hearing. The DOE Psychiatrist stated that the Report's conclusions were based primarily on the Individual's elevated PEth test results, which provided strong evidence that the Individual was drinking significantly more alcohol than he admitted. *Id.* at 70–71. Since the Individual chose not to undergo the recommended alcohol testing that could have provided objective evidence of his

claimed abstinence from alcohol, the DOE Psychiatrist testified that he had no basis to revise his conclusion that the Individual was a habitual or binge consumer of alcohol to the point of impaired judgement. *Id.* at 72–73. Moreover, since the Individual did not participate in the recommended treatment or provide objective evidence of his abstinence from alcohol, the DOE Psychiatrist indicated that he could not determine that the Individual had a positive prognosis for avoiding problematic alcohol consumption in the future. *Id.* at 73.

VI. ANALYSIS

A. Guideline G

The Individual’s alcohol-related incidents away from work and the LSO’s allegations that he has engaged in habitual and binge consumption of alcohol to the point of impaired judgement raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (c). Furthermore, the Individual did not contest any of the facts set forth in the Statement of Security Concerns or the Report.

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). Nonetheless, for the reasons described below, I cannot find that the Individual has mitigated Guideline G security concerns raised by the derogatory information listed in the Summary of Security Concerns.

In this case, the first mitigating condition under Guideline G is inapplicable because I cannot determine with certainty when, or if, the Individual began abstaining from alcohol. In light of the strong evidence from the DOE Psychiatrist’s PEth test that the Individual underreported his alcohol consumption in the clinical interview and in response to the LOI, I do not accept the Individual’s testimony as sufficient evidence of his abstinence from alcohol. Moreover, even if the Individual abstained from alcohol from November 2019 through the date of the hearing in February 2020, this three-month period of abstinence is insufficient for me to conclude that so much time has passed that the Individual is unlikely to engage in problematic alcohol consumption in the future.

Thus, I find that the Individual has not satisfied the first mitigating condition under Guideline G. *Id.* at ¶ 23(a).

The remaining three mitigating conditions under Guideline G are likewise inapplicable in this case. The Individual has not satisfied the second and fourth mitigating conditions because, without the alcohol testing recommended by the DOE Psychiatrist, I cannot conclude that the Individual has established a pattern of abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(b), (d). The Individual's decision not to pursue counseling or to attend AA meetings also renders the third and fourth mitigating conditions inapplicable because he has not participated in or completed counseling or a treatment program. *Id.* at ¶ 23(c)–(d).

Consequently, 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 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 should not be granted access authorization. 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