

In April 2017, the individual was evaluated by the DOE psychiatrist. *See* Exhibit 9. Since neither the PSI nor the psychological evaluation resolved the security concerns arising with respect to the individual's alcohol consumption, the LSO informed the individual in a letter dated September 7, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information raised one or more security concerns under "Guideline G: Alcohol Consumption" of the Adjudicative Guidelines (Guideline G). *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Initial Request dated September 22, 2017, attachment Hearing Election Choice. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 12 numbered exhibits (Exhibits 1-12) into the record and presented the testimony of one witness, the DOE psychiatrist. The individual, represented by counsel, introduced 4 lettered exhibits (Exhibits A – D) into the record and presented the testimony of four witnesses, including the individual. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.²

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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 restoring the individual's 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

² OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited Guideline G as the basis for suspending the individual's security clearance. Guideline G relates to security risks arising from alcohol consumption. 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. *See* Adjudicative Guidelines at Guideline G ¶ 21. With respect to Guideline G, the LSO relied upon the April 2017 written evaluation by the DOE psychiatrist which concluded that the individual has been a habitual user of alcohol and has been found to frequently binge drink to the extent that his judgment is impaired. Ex. 1 at 4; Ex. 3 at 10. Additionally, the LSO cited, *inter alia*, that: (1) the individual had been arrested and charged with DUI in February 2016; (2) the individual stated that he had been intoxicated three to four times a month between 2009 and 2013; (3) the individual stated that, after 2013, he had been intoxicated seven to eight times a month; and (4) the individual had driven while intoxicated two to three times. Ex. 1 at 6.

In light of the information available to the LSO, the LSO properly invoked Guideline G.

IV. Findings of Fact and Hearing Testimony

The individual does not dispute the facts alleged in the Notification Letter. Tr. at 8-9. I have carefully considered the totality of the record, including the individual's admissions, in reaching the findings of fact set forth below.

The individual was arrested and charged with DUI in 2016. Ex. 1 at 4; Tr. at 9. Following the 2016 arrest, the individual attended an alcohol highway safety school, DUI intervention classes, and a few Alcoholics Anonymous meetings. Ex. D; Tr. at 41. The individual seemed embarrassed by his DUI. Tr. at 84-85. Further, when asked why he consumed alcohol during his probationary period, although it violated the terms of his probation, the individual stated that he "had not really been forthcoming with my DUI to everyone." Tr. at 84. He continued that he was concerned what his friends might think. Tr. at 84, 85. In fact, one of the individual's witnesses corroborated that she did not know about the DUI, but had seen a change in the individual's alcohol consumption. Tr. at 66. She continued that he told her about the DUI only when she was going to testify at the hearing. Tr. at 72-73.

The individual's three character witnesses, two friends and his girlfriend, testified that they have seen a change in the individual's alcohol consumption since his DUI. His girlfriend testified that they met at work and started dating in March 2017. Tr. at 13. She stated that they go to a bar about twice a month, and the individual never drives after consuming alcohol. *Id.* She attested that she has only seen him consume more than four alcoholic drinks two or three times. Tr. at 17. The individual's first friend testified that he saw a change in the individual's alcohol consumption about 18 months prior to the hearing. Tr.

at 23. He confirmed the girlfriend's statement that the individual only frequents a bar approximately twice a month. Tr. at 24. He also confirmed that he has only seen the individual consume more than four alcoholic drinks two or three times in the last 18 months. *Id.* The individual's first friend also testified that he has seen a change in the individual's social circle over the last 18 months. *Id.* at 37. The individual's second friend supported the other witnesses' testimony. Tr. at 59. She stated that the individual has consumed less alcohol in the past 18 months. *Id.* She concluded that the individual is a private person and that he was embarrassed about the DUI. *Id.* at 73.

In April 2017, the individual was evaluated by the DOE psychiatrist, who concluded that the individual was a habitual or binge user of alcohol to the point of impaired judgment. Ex. 3 at 13. The DOE psychiatrist affirmatively stated that the individual has not fully mitigated any concerns that he (the DOE psychiatrist) may have. Tr. at 117. While acknowledging the individual's decrease in alcohol consumption, the DOE psychiatrist opined that he would like the individual to have one year of his current level of controlled drinking without an issue. *Id.* at 126. The DOE psychiatrist indicated that it is not unusual for an individual to consume alcohol during probation. *Id.* at 112. The DOE psychiatrist concluded that the individual's risk of relapse is dependent on social factors, including his relationship with his present girlfriend. Tr. at 126.

As of the date of the hearing, the individual had reduced his alcohol consumption for approximately six months. Tr. at 100. The individual completed all of the alcohol education required by his DUI conviction, but violated his probation by consuming alcohol during the probationary period. Ex. D.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

A. Mitigating Evidence

The individual disputed neither the facts alleged by the LSO in the Notification nor the opinion of the DOE psychiatrist that he is a habitual user of alcohol and frequently binge drinks to an extent that is likely to impair his judgment. Instead, he argues that he has sufficiently mitigated the Guideline G security concerns noted by the LSO through his reduced alcohol consumption and his DUI alcohol education.

B. Administrative Judge's Evaluation of Evidence

As an initial matter, I note that legitimate security concerns exist as a result of the individual's consumption of alcohol. The individual's DUI arrest in 2016 is disqualifying. Additionally, the DOE psychiatrist stated that the individual is a habitual or binge consumer of alcohol to the point of impairment. Ex. 3 at 12. The individual does not dispute the diagnosis. Tr. at 40. Therefore, the issue before me is whether the individual has sufficiently mitigated the security concerns arising from his alcohol consumption.

The individual credibly testified that he has reduced his alcohol consumption since April 2017. *Id.* at 17. This testimony was corroborated by the testimony of the individual's witnesses. Tr. at 37, 41, 42, 45, 54. The DOE psychiatrist testified as the final witness at the hearing, having been present during the testimony of all other witnesses, that as of the date of the hearing the individual had established an appropriate pattern of alcohol consumption. *Id.* at 79. However, the DOE psychiatrist testified that the individual's pattern of controlled alcohol consumption is too short a period--only six months--to resolve the concern raised by his previous alcohol use and the DOE psychiatrist's opinion that he is a habitual or binge consumer of alcohol to the point of impairment. *Cf.* Adjudicative Guidelines at Guideline G ¶ 23(b) (mitigation of alcohol related security concerns possible where an individual acknowledges his alcoholism, evidences actions taken to overcome the problem, and has established a pattern of abstinence). As stated above, the individual has not established a sufficient pattern of abstinence.

The individual's reduced alcohol consumption is supported by his witnesses' testimony. Tr. at 13, 14, 16, 30, 31, 59. My concern regarding the individual's attempt to resolve the security concerns raised by the LSO relates to three issues. First, the individual consumed alcohol during his probationary period. Although the DOE psychiatrist testified that it is not an unusual occurrence, such consumption concerns me. It shows that the individual is unable to follow rules and regulations, and that alcohol is important enough to him to violate the law. The second issue relates to the individual's current consumption. All of his witnesses testified to exactly the same level of consumption for the individual. They testified that he never consumes more than two or three drinks, except for on two or three occasions during the past 18 months when he has consumed four drinks. They also testified that when he goes out to drink, the individual never drives, but instead uses a ride-sharing service. The individual also testified that, when he knows he will be consuming alcohol, he does not drive his car. However, the individual further testified that he has had one drink and driven his car since April. Tr. at 88-89. One witness confirmed this occurrence. Tr. at 71. Finally, the DOE psychiatrist opined that he would not consider the individual

rehabilitated until he has sustained his current consumption pattern for one year. I must agree with the DOE psychiatrist on this matter.

For the reasons set forth above, I find that the individual has not resolved the security concerns associated with Guideline G arising with respect to his alcohol consumption.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline G. 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 have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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

Date: December 27, 2017