

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 April 13, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his friend, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0088 (hereinafter cited as "Tr."). The LSO submitted 13 exhibits, marked as Exhibits 1 through 13 (hereinafter cited as "Ex."). The Individual submitted two exhibits, marked as Exhibits A and B.

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 G and I 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 G: Alcohol Consumption, the LSO alleges that the Individual had been diagnosed by the Psychologist with AUD, Severe under the DSM-5, and had admitted himself into an in-patient treatment program in order to address his AUD. 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 "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder." Guideline G at ¶ 22(d). Accordingly, these allegations adequately justify the LSO's invocation of Guideline G.

Under Guideline I, Psychological Conditions, the LSO alleges that the Psychologist has diagnosed the Individual with AUD, Severe, and Alcohol-Induced Depressive Disorder (rule out Major Depressive Disorder, Recurrent) under DSM-5. Guideline I provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Guideline I at ¶ 28. Guideline I further provides that "an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness" may raise a security concern and be disqualifying. Guideline I at ¶ 28(b). Accordingly, these allegations adequately justify the LSO's invocation of Guideline I.

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. Ex. A at Paragraph IV.B.

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

The facts in this case are not in dispute. The Individual recognized that he had a serious alcohol problem and discontinued using alcohol on February 11, 2018. Ex. 11 at 6, 8, 10. He then consulted with a mental health professional, and on her advice, voluntarily entered an inpatient treatment facility on February 16, 2018, for a 30 day treatment program. Ex. 11 at 5-7. On April 3, 2018, approximately two weeks after the Individual successfully completed this treatment program, the LSO conducted a PSI of the Individual. During the PSI, the Individual admitted an extensive history of problematic alcohol use, and reported his efforts to address his AUD, which included his inpatient treatment program, participation in Alcoholics Anonymous (AA), and undergoing individual counseling. Ex. 11 at 5-8, 18-19. The Individual repeatedly described himself as an “alcoholic” during the PSI, and he expressed an intention to permanently abstain from alcohol use. Ex. 11 at 9, 11, 19, 23, 47.

At the LSO’s request, the Psychologist conducted a forensic psychological evaluation of the Individual on June 20, 2018, and issued her Psychological Assessment of the Individual on June 28, 2018. Ex. 12 at 1-2. In her Psychological Assessment, she diagnosed the Individual with AUD, Severe, noting that the Individual met all eleven of the criteria for AUD. Ex. 12 at 10, 12. The Psychologist also diagnosed the Individual with “Alcohol-Induced Depressive Disorder (rule out Major Depressive Disorder, Recurrent).” Ex. 12 at 12. The Psychologist further opined that while the Individual was not yet not rehabilitated from these two conditions, he had made a “very good start on rehabilitation,” noting that the Individual self-referred for treatment, wholeheartedly embraced abstinence, had become involved in AA, had initiated psychotherapy, and intends to permanently abstain from alcohol use. Ex. 12 at 12. However, the Psychologist further opined:

Alcohol Use Disorders are notorious for overriding good intentions, however. By their very nature, AUD's recur. The first twelve months of recovery are a period of particularly high risk. Until he has completed an extended period of abstinence, along with therapy to support alcohol recovery and address depressive vulnerability, he will be at risk for relapse, which can jeopardize judgment and reliability.

Ex. 12 at 12.

During his hearing testimony, the Individual candidly admitted that he has relapsed on three recent occasions: In October 2018, November 2018, and December 2018. Tr. at 26-28. The Individual testified that his new sober date is now December 25, 2018, one month prior to the hearing. Tr. at 26.

V. ANALYSIS

At the hearing, the Individual presented compelling evidence that he has gained the insight and understanding to recognize that he has a problem with alcohol, the destructive role that alcohol has had in his life, and his need to permanently abstain from alcohol use. Moreover, the Individual has taken the appropriate actions to address his AUD, entering into and completing an inpatient treatment program, undergoing individual counseling, and becoming involved in AA. However, during his hearing testimony, the Individual admitted that he relapsed in October 2018, November 2018, and December 2018. Tr. at 26-28. He stated that his new sober date is now December 25, 2018, one month prior to the hearing. Tr. at 26.

The Psychologist observed the testimony of the other two witnesses prior to providing her own testimony. She testified that because of his three recent relapses, the Individual's AUD is no longer in remission since the Individual would need to go three months without meeting any of the AUD criteria to be in early remission. Tr. at 51. She further opined that the Individual continued to meet four or five of the AUD criteria. Tr. at 52. Accordingly, she concluded that the individual has not been rehabilitated from his AUD and that his AUD may still negatively affect his judgment and reliability. Tr. at 52-54.

While the Individual has demonstrated remarkable forthrightness and insight during this proceeding, his three recent relapse episodes demonstrate the potential danger of further relapses, which could be expected to negatively affect his judgment and reliability. Not enough time has passed since his last use of alcohol to conclude that he is able to maintain his abstinence and that his treatment programs have been sufficiently effective to ensure that his judgment and reliability will not continue to be affected by his AUD. Since the Individual has not shown that his AUD and Alcohol-Induced Depressive Disorder have been in remission for a sufficiently long period of time to fully mitigate the security concerns that have been raised, I conclude that the security concerns raised under Guidelines G and I have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and I. 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 Guidelines G, and I. 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 Individual 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