

Individual, he had only abstained from alcohol use for a period of five to six months, and therefore had not been reformed or rehabilitated. Ex. 9 at 9. The LSO began the present administrative review proceeding by issuing 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.

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 December 11, 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 Alcoholics Anonymous (AA) Sponsor (the Sponsor), His Intensive Outpatient Program (IOP) Counselor (the IOP Counselor), a fellow AA member (the AA Member), his father, his spouse, a Clinical Psychologist (the Individual's Psychologist), and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0085 (hereinafter cited as "Tr."). The LSO submitted 13 exhibits, marked as Exhibits 1 through 13 (hereinafter cited as "Ex."). The Individual submitted 23 exhibits, marked as Exhibits A through W.

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 J 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 alleged that the Individual has been diagnosed by the DOE Psychologist with Alcohol Use Disorder under the DSM-5, without adequate evidence of rehabilitation or reformation. The LSO further alleged that the Individual has a history of two alcohol-related arrests. In addition, the Individual admitted that he is an "alcoholic." 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 disturbing the peace, or other incidents of concern, 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) "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." Guideline G at § 22(c); and (3) "diagnosis by a duly qualified medical or mental health professional . . . of [an] alcohol use disorder." Guideline G at ¶ 22(d). These allegations adequately justify the LSO's invocation of Guideline G.

Under Guideline J: Criminal Conduct, the LSO alleges that police arrested and charged the Individual with Reckless Endangerment with a Firearm on January 20, 2018.³ Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and calls into question a person's ability or willingness to comply with laws, rules, and regulations. Guideline J at ¶ 30. These allegations of criminal activity adequately justify the LSO's invocation of Guideline J.

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. 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

In June 1994, the Individual was charged with Felony Aggravated Rape. He was 17 years old at the time. Ex. 12 at 44. The Individual denied the charge. After a trial before a juvenile court, the judge upheld a motion for directed verdict of "not guilty." Ex. 2 at 46. The Individual stated that he was heavily intoxicated at the time of the incident which led to these charges. Ex. 12 at 44.

On January 19, 2018, the Individual's spouse contacted the police, informing them that the Individual threatened to kill himself right before he left their home and discharged a firearm. Ex. 8 at 2. When the police arrived at the Individual's home, they found him holding a firearm and in a state of heavy intoxication. Ex. 8 at 2. The police found evidence that the firearm had been discharged. Ex. 8 at 2. The police arrested the Individual and charged him with Reckless Endangerment with a Firearm. Ex. 8 at 2. The DOE Psychologist estimated, on the basis of the Individual's estimate of how much alcohol he had consumed prior to his arrest, that the Individual's blood alcohol level at the time of the incident was approximately .22 percent.

³ The Record shows that this arrest occurred on January 19, 2018. Ex. 8.

The PSI

Because of the security concerns raised by the January 19, 2018, incident, the LSO conducted a PSI of the Individual on April 9, 2018. During the PSI, the Individual admitted consuming approximately 18 beers prior to the January 19th incident. Ex. 12 at 12, 27. The Individual reported that he got into an argument with his spouse about feral cats that had begun living under his back porch. Ex. 12 at 14, 123. He discharged his gun into the ground in order to scare the cats away. Ex. 12 at 14-15. The Individual then tripped and fell on the ground. Ex. 12 at 16. His spouse heard the gunshot from inside the house, observed him on the ground and called 911. Ex. 12 at 16. The Individual stated that he did not recall threatening to kill himself during this incident. Ex. 12 at 170-171. The police arrived and arrested the Individual for “Reckless Endangerment With a Firearm.” Ex. 12 at 18. The prosecutor informed the Individual that he would drop this charge if the Individual would enroll in an IOP for alcohol rehabilitation. Ex. 12 at 20.

The Individual stated that he is now “alcohol free” and intends to permanently abstain from further alcohol use. Ex. 12 at 31, 42, 152. He further reported that he had not consumed any alcohol since January 20, 2018. Ex. 12 at 121, 125, 157-159. The Individual acknowledged that he can’t safely use alcohol, because he is a recovering alcoholic. Ex. 12 at 42,70, 152. The Individual noted that alcohol use makes him angry, sad and depressed. Ex. 12 at 80.

The Individual reported that after he returned home from jail, he removed all alcoholic beverages from his home, and resolved to permanently abstain from using alcohol. Ex. 12 at 41-42. The Individual reported that he had enrolled in the IOP on February 2, 2018, and was nearing completion of that program. Ex. 12 at 21, 53. The Individual reported that he was attending Alcoholics Anonymous (AA) meetings on a thrice weekly basis, since February 7, 2018. Ex. 12 at 43, 72-73, 153-156. He had obtained a sponsor, was working the 12-Step Program and was currently working on Step 6. Ex. 12 at 156. He was also receiving individual and group counseling for his alcohol disorder. Ex. 12 at 54. He was under the care of a psychologist and a psychiatrist.⁴ Ex. 12 at 63-64. All of his mental health providers have warned him that he can never use alcohol again. Ex. 12 at 68-69. The Individual stated that he intends to continue his treatment for his alcohol disorder and to continue attending AA meetings. Ex. 12 at 77, 215.

DOE Psychologist’s Evaluation

The Individual was evaluated by the DOE Psychologist, who issued a report of her finding on June 8, 2018. Ex. 9 at 10. The DOE Psychologist reported that the Individual has abstained from alcohol use since January 20, 2018, and that he had completed an IOP on April 12, 2018. Ex. 9 at 4. She noted that the Individual characterized himself as a “recovering alcoholic” and as an “addict.” Ex. 9 at 5. She further noted that the Individual expressed a commitment to permanently abstain from using alcohol, while recognizing the potential for relapse. Ex. 9 at 6. The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Severe (AUDS) under DSM-5, after noting

⁴ The Individual reported that he had been prescribed medication for “Bipolar Disorder.” Ex. 12 at 55-56. The Individual discontinued that medication at the instruction of the psychiatrist who prescribed it. Ex. 12 at 58-59. The Individual then indicated that the psychiatrist has prescribed him two other medications for Post-Traumatic Stress Disorder (PTSD) and Bipolar Disorder. Ex. 12 at 60. The DOE Psychologist found that the record did not support the Bipolar Disorder diagnosis, and that the Individual’s PTSD did not affect his judgment and reliability. Ex. 9 at 5-8.

that the Individual met at least ten of the criteria for that disorder.⁵ Ex. 9 at 7, 9. The DOE Psychologist further opined that the Individual was not reformed or rehabilitated from his AUDS, because he had only been abstinent from alcohol use for five to six months, when she believed that the Individual needed to abstain from alcohol use for at least 12 months in order to establish was reformation or rehabilitation. Ex. 9 at 9. In addition, the DOE Psychologist recommended that the Individual needs to continue his participation in AA, in order to achieve reformation or rehabilitation from his AUDS. Ex. 9 at 9.

The Individual's Psychologist's Evaluation

Prior to the hearing, the Individual submitted a copy of a Psychological Evaluation of the Individual conducted by the Individual's Psychologist, which appears in the record as Ex. B. That evaluation articulates the Individual's Psychologist's conclusion that the Individual meets the criteria for Alcohol Dependence, in remission, and Depressive Disorder, not Otherwise Specified. Ex. B at 4. The Individual's Psychologist further opined that the Individual's demonstrated commitment to sobriety, participation in AA, pastoral counseling, and abstinence from alcohol for almost one year, has resulted in a positive prognosis for his recovery. Ex. B at 4-5.

V. ANALYSIS

Guideline G Concerns

At the hearing, the Individual presented testimony showing that he recognized that he has an alcohol use disorder and must permanently abstain from the use of alcohol. To this end, the Individual presented testimony showing that he has been rehabilitated and reformed from his AUDS.

The Sponsor testified on the Individual's behalf at the hearing. He testified that he first met the Individual at an AA meeting in March 2018, and that he became the Individual's sponsor in April 2018. Tr. at 16. He stated that he talks or texts with the Individual every two or three weeks, and that he occasionally sees the Individual at AA meetings. Tr. at 17-18. The Sponsor testified that the Individual is working Step 7 in AA's Twelve-Step Program. Tr. at 19, 26. The Sponsor noted that the Individual is performing a lot of service work, which in his opinion, will help keep him sober. Tr. at 20. The Sponsor testified that the Individual told him that he attends AA meetings a couple of times a week. Tr. at 24. The Sponsor testified that the Individual recognizes that he cannot use alcohol socially, and that the Individual intends to permanently abstain from alcohol use. Tr. at 25. He also testified that the Individual intends to remain fully active in AA going forward. Tr. at 25.

⁵ The DOE Psychologist also discussed the Individual's treatment for Post-Traumatic Stress Disorder (PTSD) and Bipolar I Disorder (BD). Ex. 9 at 5-8. She found that the Individual does not meet the criteria for BD. Ex. 9 at 8. While she agreed with the diagnosis of PTSD, she did not believe that it raised a security concern for the Individual. Ex. 9 at 8. To this end, she stated: "He does not however have distortions in reality due to flashbacks in which he has trouble appreciating that the events are not reoccurring. Without the reality distortions, temporary loss of reality testing or intense affective expression, he is not someone who is apt to make significant misjudgments." Ex. 9 at 8.

The Individual's IOP Counselor, who runs the Individual's weekly Aftercare program, testified at the hearing. Tr. at 33, 42. He testified that the Individual has been regularly attending his Aftercare program. Tr. at 33-34, 42. He testified that other attendees of the Aftercare program indicate that they see the Individual at AA meetings. Tr. at 40. He testified that he has observed growth and positive changes in the Individual since he started the Aftercare program. Tr. at 41. The IOP Counselor is unaware of any relapses on the Individual's part. Tr. at 43.

The AA Member testified on the Individual's behalf at the hearing. The AA Member testified that he runs the AA meeting group that the Individual usually attends. Tr. at 47. The Individual has been regularly attending those meetings for almost a year. Tr. at 47, 60. The Group usually meets four times a week, and the Individual's attendance is very regular, at least three meetings a week. Tr. at 47-48, 58-59. The Individual has become actively involved in ministry work at a local jail and has been an asset to the AA meeting group. Tr. at 47. The AA Member stated that he believes that the Individual has not used alcohol for over a year. Tr. at 62.

The Individual's father testified on the Individual's behalf at the Hearing. He testified that the Individual has changed for the better since he became sober. Tr. at 67. The Individual has become more open and communicative. Tr. at 67-68. He now talks with his son on a daily basis, which did not happen when his son was drinking. Tr. at 68. He now trusts his son. Tr. at 68. They now attend church together on a weekly basis. Tr. at 69. His church community is proud and supportive of the Individual and his recovery. Tr. at 71. He testified that his son's "intention is to never drink again." Tr. at 75. His son realizes that he will remain a recovering alcoholic for the rest of his life. Tr. at 75. The Individual's father testified that the Individual is devoting "more and more of his time to going to the AA meetings, going to the jail, putting his time and energy into doing benefits for people that are down on their luck." Tr. at 78. The Individual's father testified that he was confident that his son had not used alcohol since the January 19, 2018, incident. Tr. at 78-81.

The Spouse testified on the Individual's behalf at the hearing. She testified that her husband recognizes that he has a problem with alcohol. Tr. at 85. The Spouse testified that she has become involved with Al-Anon, and has attended AA meetings with her husband. Tr. at 86-87, 89. She reported that the Individual told her he intends to permanently abstain from alcohol use and to continue attending AA meets for the rest of his life. Tr. at 102. She noted that she observed positive changes in her husband when he began the IOP. Tr. at 88. She reported that the Individual's relationships with his family members have improved since he became sober. Tr. at 101. She reported that it has been over a year since her husband last used alcohol. Tr. at 89. The Spouse reported that she has attended couples counseling with her husband. Tr. at 92. The Spouse testified that the Individual's family strongly supports his sobriety. Tr. at 96-97. She testified that she is confident in her husband's ability to maintain his sobriety. Tr. at 98. She noted that he shows no interest in using alcohol. Tr. at 98. The Spouse testified that she would know if her husband began using alcohol since "I know sober [the Individual] and drinking [the Individual]. He couldn't hide it." Tr. at 100. They no longer keep alcohol in their home. Tr. at 108. The Spouse does not know of any use of alcohol by the Individual since the January 19th incident. Tr. at 110. She stated that her husband is very proud of his sobriety. Tr. at 111.

The Individual's Psychologist testified on the Individual's behalf at the hearing. He testified that he met with the Individual on three occasions. Tr. at 123. He testified that his role was that of an evaluating psychologist rather than as a treating psychologist. Tr. at 124. The Individual informed

his psychologist that he had last used alcohol in January 2018. Tr. at 126. The Individual further reported that he had been attending AA meetings and Aftercare on a regular basis. Tr. at 126. The Individual has also been extensively involved in service work helping others obtain their sobriety. Tr. at 126. The Individual's Psychologist further testified: "I would say from what he told me, his efforts have been at least as good as anyone's I've ever met in recovery, especially early in recovery. That is even a year can be considered early, that is you're still working on it. And he acknowledges that, that he has a lot of work to do and emotional growth to do." Tr. at 127. In his view, the Individual has made a real commitment to his recovery, making it a part of his identity, and the Individual's life is now centered on his recovery and his recovery community. Tr. at 129. The Individual's Psychologist opined that the Individual's prognosis for recovery is "excellent." Tr. at 131. The Individual's Psychologist further opined that it would be unlikely that an individual who is as invested in his recovery as the Individual would relapse. Tr. at 138. The Individual's Psychologist stated that he did not disagree with any of the DOE Psychologist's Report. Tr. at 146.

The Individual testified that his last consumption of alcohol occurred on January 19, 2018. Tr. at 113. The Individual testified that he was heavily intoxicated during the January 19, 2018, incident. Tr. at 114. He further testified "I'm going to do the best that I possibly can not to ever drink again." Tr. at 113. The Individual testified that he introduces himself at AA meetings by stating "My name is [], and I'm a grateful recovering alcoholic." Tr. at 117. He further testified: "I'll be an alcoholic until the day I die. I'm going to need meetings and support until the day I die." Tr. at 173. The Individual also detailed his efforts to reestablish his relationships with family members that had been harmed by his alcoholism. Tr. at 126-127. The Individual also reported that he had been obtaining pastoral counseling. Tr. at 127. He testified that his church community has been very supportive of his recovery. Tr. at 157. The Individual testified that he has ordered his life around both his and other peoples' recoveries. Tr. at 161-62. The Individual detailed an extensive history of drug and alcohol testing that he has undergone since the January 19, 2018, incident, which all have been negative.⁶ Tr. at 163-164. He is still subject to random breathalyzer tests. Tr. at 173. He testified that his sobriety has had a positive effect on his relationship with his wife and children. Tr. at 167. The Individual discussed a series of chips that he has earned through AA, as rewards for various stages in his sobriety, including his one-year sobriety chip.⁷ Tr. at 117, 168-171. He testified that he is working Step 7. Tr. at 174. The Individual stated that he has no intention to ever use alcohol again. Tr. at 178.

The DOE Psychologist observed the testimony of the other witnesses before she testified. She testified that she found the Individual to be "very forthcoming" and that she believed that the Individual has taken his recovery "very seriously." Tr. at 190, 194. She noted that the Individual has been attending AA meetings on a weekly basis, has engaged in service work, and become involved in the recovery community. Tr. at 195. She stated: "there's been a really good demonstration of consistency on his part, on his efforts, which is promising." Tr. at 195. She is convinced that the Individual has been abstaining from alcohol use, as he has reported. Tr. at 196-197. She testified that the Individual is reformed and rehabilitated from his AUDS, noting that he has implemented the recommendations she provided in her report. Tr. at 197. She testified, "I do feel that he has demonstrated adequate evidence of rehabilitation in every area of his life. It's in his family, it's in his work life, it's in his religious practice. So I think that he's certainly demonstrated

⁶ This testimony is corroborated in the record by Ex. F, Ex. J, and Ex. K, which contain laboratory test reports.

⁷ The Individual submitted photographs of these chips into the record. Ex. S.

a consistent and reliable behavior of someone who's rehabilitated and reformed up to this point.” Tr. at 197-198. She further opined that the Individual has “invested quite a bit of his time, his money, his effort” in his recovery and has “made his recovery part of his daily life.” Tr. at 197. She opined that the Individual has “put it out there to everybody, and there are going to be a lot of people holding [the Individual] accountable.” Tr. at 197. She opined that the Individual is committed, and he has really gotten into it deep.” Tr. at 199. The DOE Psychologist testified that the Individual is now in sustained full remission, and that his prognosis is “very positive.” Tr. at 198-199.

Guideline G sets forth four conditions that can mitigate security concerns arising from alcohol use, three of which are present in the instant case, specifically those mitigating conditions set forth at §§ 23(b), (c), and (d). Section 23(b) provides that mitigation may be provided when: “the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of action taken to overcome this problem, and has demonstrated a clear and established pattern of . . . abstinence in accordance with treatment recommendations.” Section 23(c) provides that mitigation may be provided when: “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.” Section 23(b) provides that mitigation may be provided when: “the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of . . . abstinence in accordance with treatment recommendations.”

In the present case, the Individual has 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. The Individual has shown that he has taken the appropriate actions to address and treat his Alcohol Use Disorder, Severe, by completing the IOP, regularly attending Aftercare, attending AA meetings, working AA’s Twelve-Step Program and immersing himself in the recovery community. Most importantly, the Individual has shown that these actions have been effective, as demonstrated by his abstinence from alcohol use for 13 months. These actions have convinced the DOE Psychologist and this Administrative Judge that the Individual has been reformed and rehabilitated from his Alcohol Use Disorder, Severe, and now has a high likelihood of remaining abstinent. Accordingly, I find that the security concerns arising under Guideline G from the Individual’s Alcohol Use Disorder, Severe have been resolved.

Guideline J Concerns

The Individual’s January 19, 2018, arrest for Reckless Endangerment with a Firearm⁸ raises significant concerns about his judgment, stability, reliability, and trustworthiness. As an initial matter, I note that the criminal activity exhibited by the Individual during this incident has clearly resulted from lapses in his impulse control, rather than from dishonesty, unwillingness to follow rules, or moral turpitude. More importantly, this incidence of criminal activity occurred when he was heavily intoxicated. The testimony of the DOE Psychiatrist at the hearing convinced me that

⁸ The Statement of Security Concerns cited Individual’s June 1994 arrest for Felony Aggravated Rape, for which he was acquitted by a Court as a juvenile, as a security concern under Guideline G (since the Individual was intoxicated at the time of the incident which led to this arrest), but this arrest was not cited by the LSO as a security concern under Guideline J.

this loss of impulse control was caused by his alcohol intoxication, and were therefore symptomatic of his AUDS. She opined that the January 19, 2018, incident was driven by the Individual's heavy intoxication at the time of the incident, rather than being a reflection of his underlying character, and that a recurrence of this type of behavior by the Individual would not likely occur as long as he stays sober. Tr. 200-202. Accordingly, I am convinced that as long as the Individual abstains from alcohol use, the defects in judgment, reliability, stability, and trustworthiness that were exhibited during his criminal activity are highly unlikely to recur. Because I have found that the Individual has been reformed or rehabilitated from his alcohol use disorder, and that it is unlikely that he will relapse, I am now convinced that the Individual's criminal activity is unlikely to recur. Guideline J at § 32(a). Accordingly, I find that the security concerns raised under Guideline J have been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G, and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the security concerns raised under Guidelines G, and J. Accordingly, the Individual has 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 be restored. The National Nuclear Security Administration 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