



Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted nine numbered exhibits (Exhibits 1-9) into the record and presented the testimony of the Psychologist. The Individual introduced twelve lettered exhibits (Exhibits A-L) into the record, and presented the testimony of six witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. 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. Guideline G at ¶ 21. In citing Guideline G, the LSO relied upon the evaluation of its Psychologist, who determined that the Individual met the criteria for a diagnosis of Moderate Alcohol Use Disorder, in early remission, without adequate evidence of rehabilitation or reformation, as described in the Diagnostic and Statistical Manual of Mental Disorders, by the American Psychiatric Association, Fifth Edition, (DSM-5). Ex. 1. As a second basis for citing Guideline G, the LSO relied upon the Individual’s admissions during the PSI that: (1) he did not complete the court ordered alcohol rehabilitation program as his medical insurance would not continue to cover this treatment due to the Individual’s failure to attend Alcoholics Anonymous (AA); (2) he did not seek AA because he did not believe he was an alcoholic, and “it

just wasn't a high priority;" (3) from 2016 to December 2017, he consumed one half to three fourths of a 750ml bottle of gin twice per week in addition to an entire 750 ml bottle once per month, and became intoxicated once per week; and (4) from 2000 to 2016, he consumed one to three alcoholic beverages five nights per week and became intoxicated once per month. *Id.*

#### **IV. Findings of Fact**

The Individual acknowledged the accuracy of the allegations in the Notification Letter and sought to mitigate any security concerns. Tr. at 102. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

In March 2018, the Individual self-reported that he was court ordered to attend an outpatient alcohol treatment program. Ex. 5. Subsequently, the LSO conducted a July 2018 PSI, during which the Individual described his alcohol consumption, as contained in the summary of security concerns and detailed above. Ex. 8 at 13-14, 41-42, 45, 49, 50, 69-70.

In late September 2018, the Psychologist conducted an evaluation of the Individual. Ex. 6. In her report, the Psychologist explained that, from 2016 to approximately December 2017, the Individual drank heavily to cope with marital stress. *Id.* at 3. She noted that after the Individual's wife filed for divorce, he met with a child mediator (Mediator) in late 2017, who expressed concern regarding the Individual's alcohol consumption. *Id.* at 4. The Mediator determined that the Individual needed to use a breathalyzer before, during, and after spending time with his children. *Id.* The psychological report indicated that, according to the Individual, with the exception of several erroneous alcohol positive results occurring upon the first use of the machine, the test results never identified the presence of alcohol. *Id.*

During his psychological evaluation, the Individual explained that during a child custody hearing in early 2018, the judge ordered him to undergo an alcohol rehabilitation program, which he began in March 2018. *Id.* at 5. The six-week program convened three nights per week for three hours and required that the Individual abstain from alcohol while undergoing treatment. *Id.* Following six weeks of treatment, the Individual's insurance denied coverage for further treatment because the Individual failed to attend AA meetings. *Id.* As such, the Individual was ineligible to participate in the program's aftercare sessions. *Id.* The Psychologist noted that the Individual indicated that he did not attend AA because he did not believe he was an alcoholic, and he had limited time due to other obligations. *Id.* at 6. However, "[w]ithin a few weeks of completing [the] program, [the Individual] became more curious about AA and made meeting attendance a priority." *Id.* The Individual reported that he had been abstinent from alcohol since late March 2018 and had been attending AA meetings approximately twice per week and working with a sponsor since approximately mid-April 2018. *Id.* at 5-6.

The Psychologist noted that the Individual's goal was to "maintain abstinence for twelve months and continue attendance at AA indefinitely." *Id.* at 6. However, she added that the Individual also informed her that he "would like to enjoy a glass of wine [in the future,] but does not want to drink to excess again." *Id.* The Psychologist reported that, according to the Individual, he has never experienced cravings for alcohol, blackouts, or withdrawal symptoms. *Id.* A Phosphatidylethanol (PEth) test, administered as part of the psychological evaluation, returned negative results, indicating that the Individual had "not been drinking on a regular, heavy basis within a few weeks

of the test and ha[d] not had binge drinking episodes or moderate drinking within about one week of the test.” *Id.* at 11.

Ultimately, the Psychologist concluded that the Individual’s alcohol use “[o]ver the last two years...meets criteria for a Moderate Alcohol Use Disorder, In Early Remission.” *Id.* at 8. She further determined that there was not adequate evidence of rehabilitation or reformation, “given the stressors of his upcoming divorced and custody proceedings.” *Id.* at 9. In order to demonstrate adequate rehabilitation or reformation, the Psychologist concluded that the Individual needed to “demonstrate five more months of abstinence and attend an aftercare program, as well as continued AA participation.” *Id.*

## 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns noted by the LSO with regard to Guideline G. I 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). Therefore, I have determined that the Individual’s security clearance should be restored. The specific findings that I make in support of this decision are discussed below.

At the hearing, six witnesses testified on behalf of the individual: his direct supervisor, his mother, his three colleagues, his AA sponsor, and the individual himself. The Individual’s colleagues testified that they have weekly contact with the Individual, have never seen him intoxicated, and expressed no concerns with regard to his alcohol consumption. Tr. at 31, 34, 42, 47, 51. Of the colleagues who have witnessed him consume alcohol outside of work, they indicated that they had not observed him consume alcohol over the previous 18 months. *Id.* at 34, 51, 53. Furthermore, all of his colleagues stated that the Individual has described his positive progress with, and dedication to, AA. *Id.* at 35, 45-46, 52.

The Individual’s mother testified as to the significant changes she perceived in the Individual’s demeanor since the Individual stopped drinking. *Id.* at 17-18. She noted that she was “most definitely” concerned about his alcohol consumption, but since he began abstaining, she “just sees a completely different person.” *Id.* at 17, 25. She approximated that he had been abstinent for a year and explained that he is now happy, healthy, and no longer struggles with anger. *Id.* at 17-18, 27-28. She described that prior to abstaining from alcohol, the Individual’s house was not “a fun place to be around[,]” but she stated that “he’s not like that anymore.” *Id.* at 18. She noted that she no longer worries about saying or doing something wrong, and his house is “just a nice atmosphere.” *Id.* The Mother attested to the Individual’s dedication to AA and his regular attendance, and she explained that she has seen her son in a social setting with alcohol, and he continued to abstain. *Id.* at 16, 20. She further noted that he expressed to her that he does not desire to consume alcohol again. *Id.* at 20.

The Individual’s Sponsor testified that he met the Individual approximately one year ago. *Id.* at 61. The Sponsor indicated that he sees the Individual two to three times per week at AA meetings, and

every Friday, they meet for a one-on-one session. *Id.* at 61-62. The Sponsor stated that the Individual is active in AA meetings and has “worked through the process of the Twelve Steps” and is now working on the “traditions.” *Id.* at 66. He explained that the Individual “has opened himself up to [the Sponsor] in a very personal way” and uses the Sponsor as a support when he is upset. *Id.* at 63, 72. Echoing the Mother’s testimony, the Sponsor explained that upon starting AA, the Individual was confused and angry, but the confusion has transformed into understanding and the “anger has subsided incredibly.” *Id.* The Sponsor described the transformation as “incredible” and a “gift.” *Id.*

The Individual also testified on his own behalf. He testified that he has been abstinent from alcohol since March of 2018. *Id.* at 82. He admitted at the outset that he believes he had a problem with alcohol, but now, he has “a tool to deal with it.” *Id.* at 77. The Individual explained that he completed the court ordered alcohol rehabilitation program and is attending the aftercare program once a week. *Id.* at 95, 103. He indicated that his divorce is not yet finalized, and the court has ordered him to administer a breathalyzer test prior to and after visiting his children. *Id.* at 100. With the exception of several positive tests, prior to his sobriety date and on the day the breathalyzer machine was initiated, the Individual has never tested positive for alcohol over the course of approximately fifteen months and 359 tests. *Id.* at 111; Ex. G.

The Individual noted that each week, along with the aftercare program, he meets with his sponsor and he tries to attend three to four AA meetings at three distinct locations. *Id.* at 85, 95. He described AA’s Twelve Steps as “truly phenomenal.” *Id.* at 79. He explained that at first, he was skeptical and apprehensive, but “as [he] sat and listened, [he came] to realize...that [he is] not alone.” *Id.* at 80. The Individual detailed that after working on the Twelve Steps, he is now working on the Twelve Traditions and has found that “it’s profound in that it has the potential to impact so many people in such a deep way.” *Id.* Along with his sponsor and AA groups, the Individual described his extensive support system in the form of his mother, father, sister, and longtime friends. *Id.* at 87.

The Individual admitted that he maintains alcohol in his home as a wine collection and has purchased alcohol for others; however, he explained that consuming the alcohol is “not even a thought.” *Id.* at 83. He reiterated that he has not had any urges or craving for alcohol and stated, “it’s a nonissue. I mean, yes, there’s alcohol in the house, but it doesn’t even cross my mind.” *Id.* at 83-84. However, the Individual did state:

Maybe [someday] when my kids are out of college<sup>2</sup> and I’m retired, I’ll sit on the porch and have a glass of wine. But right now it’s not even part of my future, it’s not part of my equation. I don’t need it. I don’t want it.” *Id.* at 92.

Nonetheless, the Individual clarified that he enjoys AA and intends to attend meetings “indefinitely.” *Id.* at 94.

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<sup>2</sup> Currently, the Individual’s children are just entering their teenage years. Tr. at 105.

The Psychologist, after observing the hearing and listening to the testimony offered by the Individual and all other witnesses, indicated that her diagnosis of the individual was unchanged.<sup>3</sup> *Id.* at 115-116. However, she opined that at this time, the Individual has demonstrated adequate evidence of rehabilitation or reformation. *Id.* at 119. She elaborated, stating that the Individual exceeded her recommendation of five months of abstinence in demonstrating over one year of abstinence. *Id.*; Ex. 6. The Psychologist noted that the Individual has a low risk of relapse. Tr. at 120. She explained that the Sponsor's testimony in conjunction with the Individual's "lack of cravings...consistent from the time that" she evaluated him in September 2018 contributed to this conclusion. *Id.* at 120; Ex. 6. She additionally noted that she was not concerned with the Individual's alcohol collection or his purchase of alcohol on behalf of others as the Individual had not demonstrated cravings or "physiological aspects of dependence," such as symptoms of withdrawal or elevated liver enzymes. Tr. at 121.

With regard to the Individual's comment that he may desire to drink alcohol sometime in the distant future, the Psychologist indicated that she did not believe that the Individual had a "very clear dependence on alcohol,...meaning psychological, physiological dependence," and as such, this statement did not "provoke a lot of concern that...he was going to relapse." *Id.* She noted that in the Individual's circumstance, a return to controlled drinking would not, in and of itself, indicate a relapse. *Id.* at 123. In his situation, she stated that alcohol use that became problematic would indicate a relapse. *Id.*; Ex. 6. The Psychologist ended her testimony explaining that the Individual's participation in AA and his implementation of the program in his life, in conjunction with the Mother's testimony regarding his increased resiliency and his measured and even-keeled reactions to stressors, increased her confidence in his ability to maintain recovery. *Id.* at 124.

#### **A. Guideline G**

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 is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). If an Individual acknowledges his 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, he may be able to mitigate the security concern. *Id.* ¶ 23(b). In this case, the Psychologist diagnosed the Individual with Moderate Alcohol Use Disorder, In Early Remission. Ex. 6 at 8. Currently, however, the Individual acknowledges that he was using alcohol in excess to cope with challenges in his personal life; he has completed a six week alcohol rehabilitation program and is participating in weekly aftercare; he attends multiple AA meetings on a weekly basis; and he has been abstinent from alcohol for over one year. *See* Guideline G at ¶ 23(b). Furthermore, the Psychologist herself recognized that the Individual has exceeded her recommendations in establishing adequate evidence of rehabilitation or reformation.

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<sup>3</sup> During the hearing, there was some confusion about the Psychologist's diagnosis. According to her documentation, she diagnosed the Individual with "severe alcohol use disorder;" however, the evaluation she submitted to the DOE reported a diagnosis of "moderate alcohol use disorder." Tr. at 116-118. The Psychologist stated that "it doesn't make a tremendous amount of difference in terms of rehabilitation recommendations." *Id.* at 118. She noted that the rehabilitation recommendations would have been the same for this Individual whether the diagnosis was severe or moderate. *Id.* For the purposes of this Decision, I will use the diagnosis contained in Exhibit 6.

It is clear, based upon the evidence in the record and the testimony presented at the hearing, that the Individual has made admirable progress towards overcoming the concern regarding his alcohol consumption. As such, I find that the Individual has adequately established that restoring his security clearance will not endanger the common defense and security, or that doing so is clearly consistent with the national interest. Thus, I conclude that the Individual has sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline G.

## **VI. Conclusion**

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 have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the Individual's access authorization should 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.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals