

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 Guideline G 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).

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration.

Guideline G (Alcohol Consumption) states: "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." Adjudicative Guidelines at ¶ 21. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. *Id.* at ¶ 22.

The LSO alleges that, in March 2019, a DOE-consultant Psychologist diagnosed the Individual with Alcohol Use Disorder-Severe. Ex. 1 at 1. The LSO further alleges that the Individual reported consuming a pint of vodka daily in 2015; reported consuming 10-20 shots of whiskey daily in 2016; prematurely discontinued alcohol treatment in 2016; and was arrested and charged with Driving under the Influence (DUI) in 2005 and again in 2014. *Id.* Accordingly, the LSO's security concerns under Guideline G are justified.

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

At the hearing, the Individual presented the testimony of his wife, his officemate, his coworker, his friend, and his mother.

The Individual’s wife had known him for about 18 months. Tr. at 13. She was not a drinker and testified that the Individual would have one or two drinks on occasion early in their relationship. *Id.* at 14. The last time she knew of that the Individual was intoxicated occurred in late February 2019 during a trip with friends.² *Id.* She testified that they both intended to abstain from alcohol indefinitely. *Id.* at 17. She further testified that during recent celebrations, the Individual had not consumed alcohol. *Id.* at 22. The Individual’s wife had attended his therapy and an Alcoholics Anonymous (AA) meeting with the Individual. *Id.* at 23. She did not know if he was working the 12 Steps, stating that this would be between him and his sponsor. *Id.* at 20.

The Individual’s officemate had known him for over two years and rarely saw him outside of work. Tr. at 27. He was not aware of what specific recovery activities the Individual was pursuing. *Id.* He had never seen the Individual drink alcohol and was under the impression that he did not drink. *Id.* at 28. The officemate believed the Individual to be trustworthy, reliable, and a rule-follower. *Id.* at 28–30. He testified that the Individual now has a support structure and career to look forward to, which was a change from his circumstances while he was drinking heavily. *Id.* at 30.

The Individual’s coworker had known him for nearly three years. Tr. at 33. She and the Individual work together often and talk daily. *Id.* They had no contact outside of work. *Id.* at 34. She knew him to follow rules and protect the site’s security in doing so. *Id.* at 35–37. She had not observed any “bad behavior” by the Individual and had never seen him intoxicated or hung over at work. *Id.* at 39.

² Though the spouse testified about a March trip, the exact dates of the trip were later determined to fall at the end of February 2019. Tr. at 86–87, 124.

The Individual's friend, who was also a coworker, had known the Individual for about two years. Tr. at 42. They had met socially about four times and also communicated via text message often during the day. *Id.* She had never seen him drink alcohol or had the impression that he was drinking during a text conversation. *Id.* at 43. She believed the Individual to be honest, trustworthy, reliable, professional, and courteous. *Id.* at 45–48.

The Individual's mother communicates with him once or twice per week and visits him about twice per year. Tr. at 51. She had last seen him consume alcohol in 2016, though she was aware he had consumed alcohol since. *Id.* at 56–57. She believed that the Individual had suicidal ideations in the past that prompted him to drink. *Id.* at 57. She testified that his outlook on life has changed and that the Individual's intent was to remain abstinent indefinitely. *Id.* at 58. The Individual's mother testified that his entire life was built around continued success and part of that is having a strong support system. *Id.* at 62. For example, she testified that, during a recent flare up of the Individual's chronic health condition, the Individual turned to appropriate medicine and hospitalization, rather than alcohol. *Id.* at 62–63. She stated that his biggest support is his wife, and that they reassure each other. She also mentioned the Individual's therapy attendance. *Id.* at 64.

The Individual was unable to consistently recall his substance abuse history throughout the hearing. When asked about whether he had been honest with his Florida rehabilitation program, he testified that he had been, though this testimony conflicted with his medical charts from the rehabilitation facility. *Id.* at 80; Ex. 8 at 2. Similarly, he could not consistently recall his last use of marijuana, stating that he had last used it more than four years prior until confronted with evidence of marijuana use in May 2016. Tr. at 82–83. The Individual testified that he was aware in the past that alcohol could exacerbate his chronic condition and that he was not honest with doctors at that time about how much he was consuming. *Id.* at 72–73. He further testified that his non-compliance with rehabilitation programs was due to the extreme pain caused by his condition. *Id.* at 75.

The Individual testified that he no longer had an alcohol problem. Tr. at 90–91. He testified that he had only consumed alcohol a couple of times since finishing his Florida rehabilitation program. *Id.* at 83–84. He testified that, after his Florida rehabilitation, he would drink three to four times per year and only once per year to intoxication. *Id.* at 102. He denied ever telling the Psychologist that he would drink to intoxication every few months. *Id.* at 87. He testified that the Psychologist had asked if he had had four beers and he said yes, even though he had only had one or two beers. *Id.* at 85. However, he testified that he had also consumed several shots of liquor with the beers, which he had not disclosed to the Psychologist. *Id.* at 86. He admitted that he was not completely truthful with the Psychologist regarding how much and how often he consumed alcohol. *Id.* at 87. The Individual testified that he had not consumed any alcohol since February 27, 2019, and that it was “bad luck” that he had been at the bar on the February trip before seeing the Psychologist. *Id.* at 89, 124.

The Individual testified that he saw his counselor weekly and that they typically talk only about his past alcohol use. Tr. at 91–94, 99. He was not currently concerned about depression because he did not feel depressed and had a much better life than he used to. *Id.* at 94. He testified that he went to AA most weeks. *Id.* at 94–95. However, he rarely goes to the same meeting twice and does not have a sponsor. *Id.* at 97–99.

The Individual stated that he thought the Psychologist's report was cruel. Tr. at 100. He believed that he had dealt with his problem and did not have an alcohol problem anymore. *Id.* at 91. He testified that he had consumed about 10 drinks in a sitting in February and that this drinking was social, acceptable, and far better than what he used to do. *Id.* at 89, 101–02 (“[I]t was nothing like before. It was a social thing. It was a drink after work.”). He later testified that this February drinking was one of the worst mistakes of his life and that he had no good reason to consume alcohol on that occasion. *Id.* at 120. However, he testified that he drank on multiple nights during the February trip, even though he knew at that time that DOE was concerned about his alcohol use. *Id.* at 88, 120.

The Individual testified that he did not undergo PEth testing every six weeks, as recommended by the Psychologist, because no one gave him instructions on how to do it. Tr. at 117–18. He testified that he did not receive an email telling him how to schedule the tests and his doctor had never heard of a PEth test. *Id.* at 118–19. He testified that he did the best he could. *Id.* at 120.

In his report, received by the Individual in July 2019 (Tr. at 105), the Psychologist made several treatment recommendations, stating:

Given the three intensive inpatient treatment experiences, it is difficult to know what would likely be an effective recommendation. Further educational programs on the effects of alcohol and more weeks of group and individual counseling would likely just re-plow already plowed ground. His [chronic condition] pain which is exacerbated by drinking would have seemed to have been a strong motivator for him to become abstinent but it was evidentially not strong enough. Being kicked out of his home and made “homeless”³ was not a sustaining motivation. Consequently, it is doubtful if yet another intensive substance use treatment will be more effective than the last three. The fact that his last treatment made more of an impact on him than the other two, the fact that he apparently has reduced his consumption from 2016 levels and the fact that he now has a wife and a career provides some hope that he may be able to abstain from drinking. His abstention should be permanent as his controlled drinking has not worked. Given his repeated lack of candor about his consumption of alcohol and marijuana, my recommendation is that [the Individual] provide laboratory proof that he is not drinking. Due to that lack of candor and his lack of success in abstaining, significant proof of his abstinence will be needed. A PEth test conducted about once every six-weeks or more frequently for nine months would constitute such proof. A period less than nine months will not suffice and neither would breath tests or the short detection duration of an EtG supply the required confidence. It is suspected that he remains depressed and so medication and verbal therapy might also be helpful.

Ex. 5 at 9–10. The Psychologist testified at the hearing that his diagnosis of the Individual as having Alcohol Use Disorder-Severe was based on the Individual's continued use of alcohol, despite his chronic condition being worsened by it; the Individual's lack of candor regarding the amount he consumed recently; and the Individual's continued use of alcohol despite recommendations to

³ Documents from one of the Individual's rehabilitation programs, as well as his mother's testimony, indicate that the Individual's mother terminated his residency at her home on more than one occasion. Tr. at 54; Ex. 9 at 1.

remain abstinent due to his health conditions. Tr. at 131–32. He testified that, while weekly EtG urine tests were helpful, they could only detect alcohol for three days, so the Individual’s testing could only prove 15 days of sobriety. *Id.* at 136. He believed the Individual had likely been abstaining since July 2019. *Id.* at 141. He testified that people suffering from Alcohol Use Disorders can be productive at work and attentive family members. *Id.* at 138.

The Psychologist gave the Individual a 70 to 75 percent prognosis for never drinking again. Tr. at 139. He opined that the Individual was reformed, in that he was not drinking. *Id.* at 149. He testified that the Individual should never drink again as alcohol exacerbates his chronic medical condition. *Id.* at 139. The Individual’s medications will eventually lose efficacy and the Psychologist was concerned that the pain of the chronic condition remains a looming threat to the Individual’s abstinence. *Id.* at 140. Furthermore, the Psychologist was concerned that the Individual had never been able to fully abstain from alcohol, even with the motivation of his chronic condition and deteriorating family conditions. *Id.* at 141–42. He further testified that those who have consumed alcohol to the extent the Individual has will always have a higher chance of relapse than those who have not consumed alcohol in such a way. *Id.* at 151.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all of the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny a security clearance if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual's alcohol use is so recent that it continues to cast doubt on his current reliability, trustworthiness, and judgment, especially considering that he drank 10 drinks in one night in February, despite knowing DOE was concerned about his alcohol consumption. He described his February drinking as "one of the dumbest things I've ever done." Tr. at 120. And yet, he did it two nights in a row. His February drinking—paired with his statements about the acceptability of social drinking and "a drink after work," as well as the Psychologist's recommendation that controlled drinking does not work for the Individual—indicate that he has not demonstrated a clear and established pattern of abstinence.

The Individual also denies that he has an alcohol problem and was not entirely forthright about his recent alcohol consumption, splitting hairs between four beers versus two beers with five shots and claiming to have been improperly influenced by the Psychologist. The Individual has a long history of relapse and has not completed a treatment program since his most recent sobriety date. Furthermore, the Individual failed to complete the recommended nine months of PEth testing and, as a result, it is difficult to discern whether he has remained abstinent. His EtG testing is insufficient evidence of abstinence, particularly in light of the Psychologist's statement that such testing would be insufficient to demonstrate abstinence in the Individual's case.

For the foregoing reasons, I cannot find that the Individual has resolved the Guideline G security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals