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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: October 15, 2020)	Case No.: PSH-21-0001
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_____)	

Issued: February 3, 2021

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's security clearance should be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold access authorization. In June 2018, the Individual reported to the Local Security Office (LSO) that he was arrested for DUI on June 24, 2018. Ex. 9. In response to information gathered from a background investigation including a personnel security interview, the LSO requested that the Individual be evaluated by a DOE consulting psychiatrist (DOE Psychiatrist), who subsequently issued a report of his findings. Ex. 11. After receiving the DOE Psychiatrist's Report, the (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that his security clearance had been suspended and that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his security clearance. See 10 C.F.R. § 710.21.

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of two witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-21-0001 (hereinafter cited as "Tr."). The LSO presented the testimony of one witness. The LSO submitted 14 exhibits, marked as Exhibits 1 through 14 (hereinafter cited as "Ex."). The Individual submitted 23 exhibits, marked as Exhibits A through W.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for denying the Individual a security clearance. Ex. 1. Conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Adjudicative Guidelines at ¶ 15. The LSO listed as relevant facts: The Individual was arrested for DUI on June 24, 2018, and told the arresting officer that he had consumed several beers prior to the arrest; however, during a psychiatric evaluation with the DOE Psychiatrist on November 30, 2018, he admitted that he was deceptive in the reporting of his alcohol consumption on the date of his arrest. The LSO's allegations of lack of candor based on the Individual's providing discrepant information regarding his alcohol use justify the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(d).

The LSO also cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as a basis for denying the Individual a security clearance. Ex. 1. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. *Id.* The LSO asserted that the DOE Psychiatrist concluded that the Individual's deception regarding his alcohol use is an emotional, mental, or personality condition that can impair his judgment, stability, reliability, or trustworthiness. The DOE Psychiatrist expressed concern about what he saw as the Individual's "blatant lying about his consumption of alcohol" the night of the DUI and in his report the following day. He concluded that "this itself seems to indicate poor judgment." Ex. 11 at 10. In light of these facts, the LSO's invocation of security concerns under Guideline I is justified. Adjudicative Guidelines at ¶ 28(b).

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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.

IV. FINDINGS OF FACT

On June 24, 2018, the Individual was arrested for Driving Under the Influence (DUI). Ex. 9. In his June 25, 2018, report to his employer about the arrest, he stated that he told the arresting police office that he consumed two beers. Ex. 10. In a subsequent personal security interview (PSI) in September 2018, the Individual stated that, contrary to what he told the arresting police office, he had consumed a total of four mixed alcoholic drinks and two beers on the night of his arrest. Ex. 13 at 49. After reporting the incident to the LSO, the Individual was referred to the DOE Psychiatrist for an evaluation. Ex. 11. During the evaluation, the Individual admitted to the DOE Psychiatrist that he had provided false statements to the police regarding his alcohol use during his arrest. Ex. 11 at 6; Tr. at 47. Thereafter, the DOE Psychiatrist concluded that the Individual had an emotional, mental, or psychological condition that can impair his judgment, stability, reliability or reliability because the individual was deceptive regarding his alcohol use during his DUI arrest. Ex. 11 at 11.

At the hearing, the Individual confirmed that at his DUI arrest, he told the police officer that he “had a couple of beers,” admitting that he was deceptive by not fully reporting the amount of alcohol he had consumed. Tr. at 47, 48–50, 68. The Individual acknowledged that he was dishonest because he “was terrified when I got pulled over. I was scared. I wasn’t myself[;] I had been drinking, and I think I just tried to minimize what I had had to drink” *Id.* at 47. He explained that he was nervous and worried about getting arrested, and the impact on his job, so he was trying to minimize the outcome. *Id.* at 73.

With regard to the report to his employer, the Individual testified that wanted to clarify the amount of alcohol he reported to the police officer during his DUI arrest. The Police Report stated that the Individual told the arresting officer that he had consumed several beers. It was important to the Individual to correct this information because he had alleged that he told the officer that he consumed “two beers. Ex. 10; Tr. at 75–76; Ex. C at 2, Ex. 9 at 5. The Individual acknowledged that in hindsight, he could have been clearer in his written report. Tr. at 76–77.

The Individual testified that he never had an intent to deceive anyone other than the police officer on the night of his DUI. Tr. at 53. He asserted that he has taken positive steps to alleviate the factors that contributed to his untrustworthy behavior. *Id.* At 77-78. He testified that he has not consumed alcohol since his DUI and does not keep alcohol in his home. *Id.* at 49–50, 53. The

Individual also obtained an evaluation from a substance abuse professional, as required by his employer, and complied with the counselor's recommendations to complete five counseling sessions and five AA meetings. *Id.* at 56. The Individual submitted a list of the AA meetings he attended with signatures and dates that confirmed he attended five AA meetings between June 30, 2018, and July 1, 2018. Ex. A; Tr. at 56–57. He testified that he wanted to demonstrate that he was trying to do what was being asked of him so he could try to get his clearance back as quickly as possible so he promptly attended five AA meetings. Tr. at 57–58. The Individual provided copies of 15 random alcohol tests between July 5, 2018, and February 3, 2020, which were a combination of random urinalysis tests and breathalyzer tests. Exs. I–W. He testified that he has no intention to consume alcohol in the future. Tr. at 78–79.

The Individual testified that he completed five counseling sessions and provided a letter from his counselor (Counselor) dated July 19, 2018, which stated that the Individual actively participated in treatment, completed five counseling sessions, followed all recommendations, and worked diligently to develop healthy life strategies and coping mechanisms. Tr. at 58; Ex. B. Moreover, he later returned to his Counselor for an additional counseling session in November 2020, to ask for her opinion regarding the DOE Psychiatrist's report (the report) and to obtain her opinion as to whether she thought he needed additional counseling sessions. Tr. at 59, 83–84. He also indicated that after speaking with his Counselor regarding the DOE Psychiatrist's report and subsequently reflecting on the report, he gained a clearer understanding of the DOE Psychiatrist's concerns regarding his deception. *Id.* at 51–53. The Individual admitted that at the time he had his evaluation with the DOE Psychiatrist, he had not recognized that he had slipped into an unhealthy routine involving alcohol use. Tr. at 53, 64. He explained that after his divorce, he started going out socially with coworkers, but eventually the socializing stopped and he indicated he started on a negative trend where he was going out to eat, and consume alcohol before going home. Tr. at 52–53, 85. He explained that he believes the DOE Psychiatrist had concerns because he had been untruthful to the police officer, and because he was not "honest with [himself]." Tr. at 64. The Individual stated, "[the DOE Psychiatrist] viewed it as maybe I was being deceptive, . . . to me, I feel like I wasn't really seeing what was going on, and I think that in some way caused him concern, and rightfully so." Tr. at 64.

The Individual also asserted that subsequent to his counseling sessions and after re-reading the DOE Psychiatrist's report and reflecting back on his DUI, he has developed a greater awareness of his stressors, and has changed his behavior to decrease his stressors and mitigate the current security concerns. Tr. at 64–65, 85–86. He testified that at the time of his DUI, he was facing several stressors, including his divorce; the death of his brother-in-law, with whom he had a close relationship with; and his father's prostate cancer relapse. *Id.* at 54. Moreover, he testified that he recognizes that both an earlier DUI arrest from 27 years ago and his 2018 DUI were subsequent to a divorce, and both of those actions were "life-changing events", which he learned he needs to watch out for in the future. *Id.* at 70, 86. As such, he has intentionally decreased his time socializing, and instead, he spends more time at home. *Id.* at 54.

The Individual's witnesses, his sister and brother-in-law, both testified that the Individual is honest, moral, and trustworthy. Tr. at 26–27, 34, 42. His sister stated that when their parents divorced, the Individual handled their mother's finances without an issue. *Id.* at 14. Both witnesses confirmed that just prior to his DUI, he and his wife divorced and his sister's husband, who was

the Individual's good friend, died. *Id.* at 24, 28–29, 36. Both witnesses testified that they have not seen the Individual consume alcohol since his DUI. *Id.* at 19, 35, 37. The brother-in-law said he sees the Individual monthly for dinner, but prior to the Individual's father's death and the pandemic, they saw each other once a week. *Id.* at 36–37. Both witnesses asserted that they have not seen the Individual intoxicated and do not believe that he had a problem with his alcohol use. *Id.* at 19, 26, 40–41. The brother-in-law avowed that there is no alcohol in the Individual's house. *Id.* at 42–43.

In his December 2018, report, the DOE Psychiatrist concluded that the Individual had an emotional, mental, or psychological condition that can impair his judgment, stability, or reliability because the Individual was deceptive regarding his alcohol use during his DUI arrest. Ex. 11 at 11. In an addendum to his report dated December 14, 2018, the DOE Psychiatrist concluded that the Individual “has a mental condition of deceitfulness or misrepresenting the facts,” because of the Individual's “apparent minimization of his use of alcohol and his denial that he has an alcohol problem.” *Id.* at 16. The DOE Psychiatrist's conclusion was based on a combination of a records review and a focused psychiatric examination, which included the Individual admitted during the evaluation that he had been untruthful to the police officer during his DUI arrest concerning his total amount of alcohol use. Ex. 11 at 1, 6, 10. He recommended that the Individual abstain from alcohol and undergo laboratory evidence of alcohol tests every six to eight weeks to gain confidence in his ability to abstain. Ex. 11 at 16.

At the hearing, the DOE Psychiatrist stated that the Individual's “judgment and his reliability [the] night [of his DWI] was not good...and when we're pretty anxious and panicked by the police pulling us over and all that, that certainly does create a very trying kind of situation.” *Id.* He further stated, “what I've taken from this today is that I think that at the core, [the Individual] is a pretty truthful guy,...and... when he's not disinhibited and impaired about things, I think he—it sounds like he's a pretty reliable guy.” *Id.* at 98.

The DOE Psychiatrist testified that in situations where an individual abstains without participating in a treatment program, he usually recommends two years of abstinence, which the Individual has fulfilled. Tr. at 96. The DOE Psychiatrist gave the Individual a “very favorable” prognosis based on several factors including his length of abstinence, his testimony regarding the DOE Psychiatrist's report, his completion of counseling, and the additional actions he took to recontact his Counselor to seek per professional opinion on his issues and the report. per *Id.* at 98, 101.

V. ANALYSIS

A. Guideline E

The Individual's deceptive reporting of his alcohol consumption during his June 2018 arrest raises security concerns under Guideline E. Adjudicative Guidelines at ¶ 16(d). An individual may mitigate security concerns, in relevant part, under Guideline E if “The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, reliable or other inappropriate behavior, and such behavior is unlikely to recur.” Adjudicative Guidelines at ¶ 17(d).

The Individual has readily acknowledged his untruthful statements regarding his alcohol consumption during his June 2018 DUI arrest. He has also obtained counseling, and took the additional step of recently contacting his Counselor on his own accord, to seek her professional opinion as to whether he needed additional counseling, and so he could better understand the concerns that the DOE Psychiatrist stated in his report. Importantly, he provided objective evidence of 15 random alcohol tests between July 5, 2018, and February 3, 2020, which support his assertions that he has not consumed alcohol since his DUI arrest and is able and willing to commit to abstinence.

While he was dishonest with the police officer on the date of his arrest regarding his alcohol consumption, he acknowledged his deception during the PSI, to the DOE Psychiatrist, and during the hearing. While not mitigating, he explained that he lied because he was concerned about his fear of getting arrested and the impact that would have on his job. Moreover, the Individual's has demonstrated, through his testimony, the recent opinion of the DOE Psychiatrist, and the letter from his Counselor, that he has a greater awareness of the stressors that led to his alcohol consumption and related untruthfulness. He has taken additional positive steps to alleviate the stressors, and circumstances, that contributed to his untruthfulness. His credibility is bolstered by the testimony of both of his witnesses, his objective evidence that supports his testimony that he remains abstinent, and perhaps most importantly by the opinion of the DOE Psychiatrist who opined that the Individual has demonstrated adequate reformation and rehabilitation with regard to honesty. For the foregoing reasons, I find that the Individual's behavior regarding untruthfulness is unlikely to recur and that he has resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline I

The DOE Psychiatrist's conclusion from his November 30, 2018, evaluative report that the Individual's deception regarding his alcohol use is an emotional, mental, or personality condition that can impair his judgment, reliability, stability, or trustworthiness raises concerns under Guideline I. Adjudicative Guidelines at ¶ 28 (b). Conditions that may mitigate security concerns under Guideline I, in relevant part, include the following:

- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

Adjudicative Guidelines at ¶ 29(c).

The DOE Psychiatrist's opinion in his report formed the basis of the DOE's security concerns under Guideline I. It is important to note that the DOE Psychiatrist's concerns were founded upon the Individual's deceptive statement that he made to the police officer during his DUI arrest. As stated above, the Individual presented significant evidence to demonstrate that he has taken substantial steps to address the stressors that led to his DUI. This includes seeking counseling, remaining abstinent for over two years, providing objective evidence of random and negative alcohol testing, decreasing his attendance at social events, and spending more time at home. Also

noteworthy is the DOE Psychiatrist's updated opinion that the Individual is "a pretty truthful guy" and in fact, the DOE Psychiatrist testified, "I think if he went out and had three beers he would tell the cop, 'I had three beers.'" Tr. at 101. He further stated, "I think he would cling to the actual truth of things now more rigorously than he would [have before]...I think he's going to live and stand on the truth more now." *Id.* Again, most importantly, as discussed above, the DOE Psychiatrist opined at the hearing that the Individual has demonstrated adequate reformation and rehabilitation regarding his honesty. Accordingly, I find that the Individual has carried his burden to demonstrate that he has successfully mitigated the DOE's security concerns under Guideline I.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E and I of the Adjudicative Guidelines. 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. 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 regulation set forth at 10 C.F.R. § 710.28.

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