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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: November 22, 2017)	Case No.: PSH-17-0086
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_____)	

Issued: February 20, 2018

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to obtain an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *Security Executive Agent Directive 4 - National Security Adjudicative Guidelines* (June 8, 2017) (Adjudicative Guidelines), I conclude that the individual should not be granted an access authorization at this time.

I. Background

The individual is employed by a DOE contractor and his employer requested that the DOE grant the individual a security clearance. In conducting a review of the individual’s application for a security clearance, the Local Security Office (LSO) received potentially derogatory information regarding the individual’s personal conduct. In order to address those concerns, the LSO summoned the individual for two personnel security interviews (PSIs) in June 2017. Following the PSIs, the LSO sent the individual for an evaluation with a DOE consultant-Psychologist (DOE Psychologist).

On October 6, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE obtained reliable information that created substantial doubt regarding his eligibility to possess an access authorization. In an attachment to the Notification Letter, the LSO explained

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

that the derogatory information fell within the purview of Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of 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 individual testified on his own behalf. The DOE Counsel presented the testimony of the DOE Psychologist. The DOE also submitted 10 exhibits (Exhibits 1-10) into the record. The exhibits will be cited in the 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.²

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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 his 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 Guidelines G and J of the Adjudicative Guidelines. In citing Guideline G, the LSO referenced a report issued by the DOE Psychologist (Report) opining that the individual suffered from Alcohol Use Disorder and that he had not demonstrated adequate rehabilitation or reformation. Also cited were various arrests on alcohol-related charges and statements the individual made in two personnel security interviews regarding his consumption of alcohol. The LSO cited as

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

Guideline J derogatory information regarding the individual's history of numerous arrests and citations as well as admissions made in two personnel security interviews that he had used cocaine and marijuana. A summary of the individual's arrests and other incidents allegedly raising security concerns as recorded in the Notification Letter are presented below:

<u>Date</u>	<u>Arrest/Incident</u>
June 2017	Transported to a detention center for alcohol detoxification in lieu of being arrested for Public Intoxication.
May 2017	Cited for No Proof of Insurance.
October 2016	Cited for Speeding.
During 2012	Missed work or came late to work because of alcohol use.
February 2010	Cited for Failure to be Insured and Expired Registration.
August 2006	Arrested for Failure to Obey a Police Officer. Individual was on probation at the time of this arrest.
February 2006	Arrested for Driving While Intoxicated (DWI), Careless Driving and Driving with a revoked license.
June 2005	Arrested for Public Intoxication.
August 2004	Arrested for DWI.
January 2004	Cited for using a Fictitious License Plate.
September 2003	Arrested for DWI. Cited for Failure to Obey Traffic Control Device and Driving Without Insurance.
December 2002	Cited for Failure to Wear a Seatbelt.
Sometime in 2002 (at age 21)	Transported to a detention center for alcohol detoxification.
March 2001	Cited for Failure to Stop at a Red Light.
January 2001	Arrested for Possession of Crack Cocaine and Marijuana (less than 1 ounce) and Possession of Paraphernalia.
2000 to 2012	Used marijuana twice a month.
1999 to 2008	Used cocaine twice a week.
November 1998	Arrested for Possession and Trafficking of Marijuana
June 1997	Cited for Failure to Wear a Seatbelt.
1993 through 1999	Used marijuana two to three times a week.
1993 to November 1998; 2000 to 2006; 2009 to 2012 or 2013	Purchased marijuana approximately every two weeks.
Unknown	Purchased \$50 worth of cocaine on two occasions.

I have reviewed the exhibits in this case and find that the LSO had sufficient grounds to invoke Guidelines G and J in this case. 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. Adjudicatory Guideline G at ¶ 21. Involvement with criminal activity also creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicatory Guideline J at ¶ 30.

IV. Findings of Facts

The individual does not dispute the factual allegations in the Notification Letter. Tr. at 44.

The LSO's investigation revealed that the individual had a significant history of arrests and citations. During the period 1997 through 2017, the individual had been cited for 10 traffic citations, arrested on three occasions for Driving Under the Influence of Alcohol, arrested once for Public Intoxication, arrested twice for possession of illegal drugs, arrested once for Trafficking a Controlled Substance (Marijuana), and arrested once for Failure to Obey an Officer. Ex. 1 at 2-4.

In June 2017, the LSO conducted two PSIs with the individual. Ex. 10. During these interviews, the individual confirmed his history of various alcohol-related arrests. The individual provided details regarding his alcohol consumption that led to these arrests. The individual also admitted that his alcohol consumption had caused him to arrive late to work or fail to arrive to work. Ex. 10 at 158. During the period 2002 to 2003, the individual would consume alcohol while on his lunch break at work. Ex. 10 at 159. The individual further admitted that he had hidden his alcohol consumption from his then-significant other and their children. Ex. 10 at 164-65. During the PSIs, the individual stated his belief that he is an alcoholic and that he craves alcohol. Ex. 10 at 132-33.

After conducting the PSIs with the individual, the LSO referred the individual to the DOE Psychologist for an examination. The individual informed the DOE Psychologist that, in the prior year, he would consume two or three beers on most weekends but not during the weekdays. Ex. 4 at 3. The individual told the DOE Psychologist that he believes that he is "an alcoholic" and that his body "craves alcohol and always will." Ex. 4 at 3. After reviewing the individual's alcohol consumption and arrest history, the DOE Psychologist had two blood tests performed on the individual. These tests measured the amount of Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) in the individual's system. The individual tested negative for EtG and the reviewing physician informed the DOE Psychologist that this negative result was evidence that the individual had not consumed alcohol for the three days prior to the test. Ex. 4 at 5. However, the individual's PEth test was positive with a result of 207 ng/ml. Ex. 4 at 5. The reviewing physician indicated that that level of PEth was consistent with moderate to heavy alcohol consumption. The DOE Psychologist concluded that these test results did not support the individual's reported current alcohol use. Ex. 4 at 5. In the Report, the DOE Psychologist determined that the individual met the diagnostic criteria for a diagnosis of Alcohol Use Disorder, Mild, under the Diagnostic and Statistical Manual, Fifth Edition. To demonstrate rehabilitation, the DOE Psychologist opined that, to show adequate evidence of rehabilitation, the individual should abstain from alcohol consumption for a minimum of six months along with participation in a treatment program. Ex. 4 at 6. To demonstrate reformation, the individual would need to demonstrate abstinence from alcohol for a period of 12 months along with a program of random alcohol testing. Ex. 4 at 6-7.

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 find that the individual should not be granted a security clearance. Specifically, I cannot find that

granting the individual a security clearance would not endanger the common defense and security, and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

1. Guideline G

The Guideline G security concerns center on the DOE Psychologist's determination that the individual suffers from an alcohol use disorder as well as the individual's history of alcohol-related arrests and citations.

At the hearing, the individual asserted that almost all of the personal conduct that the Notification Letter cites as raising a security concern occurred a number of years ago and that he is now a very different person. Tr. at 11. The individual testified that he began to use alcohol early in his life and that his family had alcohol misuse problems. Tr. at 11. He began to realize that he had an alcohol problem when his relationship with his then-significant other, who was the mother of his children, ended and he became homeless. Tr. at 12. During this time, the individual lost his employment because he tested positive for marijuana. Tr. at 13. The individual became homeless but began to obtain perspective on his problem when he began to live with his cousin and others who also had alcohol problems. Tr. at 12. The individual resolved to change his life for the better. Tr. at 13. To this effect, the individual found new employment. Tr. at 13-14. The individual then entered and completed a training program to become a journeyman electrician. Tr. at 14. The individual was able to obtain a residence and began to have regular visitation with his children. Tr. at 13. Because the individual's children were spending increasing amounts of time at his residence, he became more responsible and he began to feel better about himself. Tr. at 15. At this time, the individual resolved to be "strong enough to control not drinking it or not consuming much at all." Tr. at 20. The individual believes that he now has "control" over his alcohol consumption. Tr. at 28.

The individual testified that he has only consumed alcohol on three occasions since August 2017. Tr. at 21, 33-34. The first occasion occurred three weeks after his examination by the DOE Psychologist in August 2017. On that occasion, the individual consumed three bottles of beer. Tr. at 34. On the second occasion, during a weekend in December 2017, the individual consumed five beers. Tr. at 34. Lastly, the individual recounted that, during the weekend prior to the hearing, he had consumed five bottles of beer. Tr. at 34.

The individual asserts that, as a result of his efforts to reduce his current level of alcohol consumption, his life has changed. The individual no longer associates with his former friends with whom he would consume excessive amounts of alcohol. Tr. at 26. In being "sober," the individual found that he had more opportunities to spend time with his children. Tr. at 26. Further, the increased expenses of raising his children reduces the amount of money he has to spend on alcohol. Tr. at 27. Currently, and for the past couple of years, the individual's life consists mainly of being a "homebody" and spending time with his family and work. Tr. at 27-28.

With regard to his most recent involvement with the police, a June 2017 detention for being intoxicated (Public Intoxication), the individual testified that he was in a motel room consuming alcohol when a fight between two of his cousins outside of his room resulted in a window being broken. Tr. at 16, 29. The motel summoned the police and he was transported to a detention facility by local police around 10:30 p.m. of the day of the incident. Tr. at 16, 38. The individual was then held at the detention facility until he tested negative for the presence of alcohol, at 4:30 p.m. of the

following day. Tr. at 16, 39. The individual does not believe that he was intoxicated during this incident but admitted that, prior to the fight breaking out, he had consumed five or six beers and a “couple of shots.” Tr. at 16, 39.

After reading the DOE Psychologist’s treatment recommendations, the individual examined the possibility of entering a 90-day program but decided that he could not be away from work that long because of financial concerns.³ Tr. at 22. The individual has not sought out counselling and has only been able to attend one Alcoholic Anonymous (AA) meeting due to his current late night work schedule. Tr. at 17, 39. The individual is willing to comply with the DOE Psychologist’s recommendation of six months of abstinence from alcohol. Tr. at 23. While the individual does not believe that he needs to attend AA meetings or any type of treatment program, he believes that such programs could help give him support. Tr. at 41.

The DOE Psychologist testified that, based upon the testimony, she could not conclude that the individual was rehabilitated or reformed. Tr. at 51. As for the individual’s claim that he was not intoxicated during the June 2017 incident, the DOE Psychologist estimated that, because it took approximately 14 hours of confinement at the detention center before alcohol was no longer present in his body, the individual’s alcohol level at the time the police placed him in custody was 0.25. Tr. at 52. She also expressed concern that, based on the individual’s description of his alcohol consumption after August 2017, two of the three occasions when he consumed alcohol could be considered “binge” drinking episodes – consumption of 5 or more alcoholic drinks. Tr. at 52, 54. This pattern of alcohol consumption argued against a conclusion that the individual has control over his alcohol consumption. Tr. at 52

After reviewing the evidence before me I cannot conclude that the individual has resolved the security concerns raised by his history of alcohol-related arrests and incidents and the DOE Psychologist’s diagnosis of Alcohol Use Disorder. I find that DOE Psychologist’s diagnosis of Alcohol Use Disorder to be well supported by the facts contained in the record. Additionally, the individual has not completed the suggested treatment recommendations made by the DOE Psychologist. I also am not convinced, based upon the individual’s testimony, that he fully appreciates the extent of his problem with alcohol misuse. Further, the incidents of binge drinking by the individual after his examination by the DOE Psychologist is concerning. I commend the individual for the significant changes he has made in his life and his dedication to his employment and his children. However, the individual has not provided sufficient evidence for me to conclude that he is rehabilitated or reformed from his alcohol misuse problem. I further find that none of the Guideline G mitigating factors as described in the Adjudicatory Guidelines are applicable in this case.

2. Guideline J

The Guideline J concerns arise from the individual’s significant history of arrests and citations. A review of the individual’s criminal activities indicates that a number of these incidents occurred on or before 2006. Given the passage of time, approximately 11 years, the security concerns arising from these incidents would seemingly be limited. Nonetheless, a significant number of these incidents involve the individual’s problematic alcohol consumption. Because the individual has

³ The individual stated that he did not read the DOE Psychologist’s treatment recommendations until one month before the hearing. Tr. at 30.

not resolved the security concerns stemming from his misuse of alcohol, as discussed in the section above, I cannot be assured that the individual will not become involved in future incidents involving the law enforcement. Significantly, as recently as June 2017, the individual was escorted by local police to a facility due to his alcohol intoxication. I thus cannot find that the individual has submitted sufficient evidence to resolve the concerns raised by the Guideline J derogatory information recorded in the Notification Letter. In this respect, I find that none of the Guideline J mitigating factors listed in the Adjudicatory Guidelines are applicable in this case.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guidelines G and J. After considering all 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 not brought forth sufficient evidence to resolve the security concerns associated with those guidelines. I therefore cannot find that granting the individual an access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the DOE should not grant the individual an access authorization.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals