*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
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Filing Date: December 6, 2017	)	Case No.: PSH-17-0088
	)	
	)	

Issued: February 27, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization[1] 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 *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 access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In May 2017, the individual reported that he had been arrested for Driving While Under the Influence of Liquor (DUI) Ex. 7. As a result, the local security office (LSO) called the individual to a Personnel Security Interview (PSI) in June 2017. Ex. 11. In response to information gathered from the PSI and background investigation, a DOE consulting psychiatrist evaluated the individual. Ex. 8.

As the arrest and the psychiatrist's evaluation both raised unresolved security concerns, the LSO informed the individual, in a Notification Letter dated November 2, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold

[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.

a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under "Guideline G: Alcohol Consumption," Ex. 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. 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 LSO introduced 12 numbered exhibits (Exhibits 1-12) into the record and presented the testimony of the DOE psychiatrist. The individual introduced 6 lettered exhibits (Exhibits A-F) into the record and presented the testimony of four witnesses, including himself. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic 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 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 restoring 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 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

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

an individual's reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon the August 2017 written evaluation by the DOE psychiatrist, which concluded that the individual met the *Diagnostic and Statistical Manual, Fifth Edition* (DSM-V) criteria for a diagnosis of Alcohol Use Disorder, Mild, without adequate evidence of rehabilitation or reform. Ex. 1. The LSO additionally cited that the individual was arrested and charged with DUI in May 2017, and it relied upon the individual's admissions, during the June PSI, that: (1) prior to the arrest, he consumed six ounces of vodka in approximately 30 minutes; (2) from late 2016 to May 2017, he consumed two to four ounces of hard liquor five to six times per week; and (3) during this timeframe, he drank to intoxication twice per month when he consumed six to ten ounces of alcohol. *Id*.

In light of the information available to the LSO, the LSO properly invoked Guideline G.

IV. Findings of Fact

The individual did not dispute the facts alleged in the Notification Letter. Ex. 2. The individual does, however, assert that as of his May 2017 DUI arrest, he has been engaging in the Employee Assistance Program (EAP) at his worksite, participating in Alcoholics Anonymous (AA), and practicing abstinence from alcohol. *Id*. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

Following the May 2017 DUI, the LSO interviewed the individual in a June 2017 PSI. During the PSI, the individual explained the circumstances of his DUI arrest, stating that, after working late, he drove to a store parking lot where he consumed "a couple of swallows" of vodka from a 1.75 liter bottle and "dozed off." Ex. 11 at 8-9. After about 15-20 minutes, the individual awoke and drove to an adjacent store's parking lot because he needed to use the restroom. *Id*. at 8. However, the individual could not make it to the restroom and urinated in the parking lot. *Id*. He then consumed "about four more swallows of vodka." *Id*. A police officer approached him in the parking lot, performed field sobriety tests, and arrested him for DUI. *Id*. at 8, 13. Approximately 40 minutes later, the police administered a breathalyzer, which indicated the individual had a blood alcohol content (BAC) of .12. *Id*. at 13.

The individual additionally explained that, prior to the arrest and beginning in mid-2016, he would consume two to three drinks per night, approximately five to six nights per week. *Id*. at 66. He noted that he usually consumed vodka, and on the weekends, approximately twice per month, he might consume up to six or eight ounces of vodka over the course of three or four hours. *Id*.

In August 2017, the individual underwent an evaluation performed by the DOE psychiatrist. During the evaluation, the individual informed the psychiatrist that he had not consumed alcohol since his arrest in May 2017. Ex. 8 at 8. He further stated that, throughout the previous year, he had "to drink more to get the same effect of relaxation." *Id*. at 7. The psychiatrist noted that the individual's description was consistent with the development of a tolerance to alcohol. *Id*. The psychiatrist additionally found that the individual "spent a great deal of time consuming alcohol [as] he would spend hours most evenings consuming alcohol." *Id*. Utilizing the DSM-V, and identifying two symptoms of alcohol use disorder, the psychiatrist diagnosed the individual with Alcohol Use Disorder, Mild. *Id*.

Additionally, the psychiatrist found that the individual engaged in both habitual and binge consumption of alcohol to the point of impairment. In support of this finding, the psychiatrist cited the individual's description of his historical alcohol consumption habits, specifically, statements that he would become intoxicated "up to several times per week," and became intoxicated on multiple occasions over the previous year to the extent that he would achieve a "calculated BAC of approximately twice what would be considered legal intoxication." *Id*. at 7.

Although the individual sought pastoral counseling, underwent one session with his workplace psychologist, and asserted that he had been abstinent from alcohol for approximately three months, the psychiatrist noted that the individual had not received any formal alcohol treatment. *Id*. at 8. Furthermore, in spite of receiving a recommendation from the workplace psychologist that he should engage in counseling and agree to alcohol testing pursuant to an abstinence agreement, the individual had "not followed through…and [did] not feel he would benefit from treatment." *Id*. As such, the psychiatrist determined that the individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id*.

As part of the evaluation, the psychiatrist ordered a phosphatidylethanol (PEth) test, which indicates alcohol consumption within the 60 days prior to the test.[3] Ex. 8 at 12; Ex. 9. However, at the time the psychiatrist drafted his report, the individual's PEth test results were not yet available. Ex. 8 at 7. After the psychiatrist received the results of the individual's PEth test, he submitted an addendum to his report in late August 2017. Ex 9. The addendum noted that the results of the PEth test were positive at a level of 239 ng/ml. *Id*. The psychiatrist stated that such results were consistent with "heavy alcohol use." *Id*. He further noted that, as PEth can be detected in the body up to 60 days after the last alcohol consumption, the results indicated that the individual had "used alcohol since [the] arrest in May and was not forthcoming about this during the evaluation." *Id*. As such, the psychiatrist determined that, in order to show adequate evidence of rehabilitation or reformation, the individual should participate in, and successfully complete, a substance abuse intensive outpatient program followed by aftercare or individual therapy. *Id*. The psychiatrist added that the individual should enroll in an alcohol monitoring program with regular alcohol tests, through his employer, for one year, and maintain sobriety for at least one year. *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's security clearance should not be restored. I cannot 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). The specific findings that I make in support of this decision are discussed below.

[3] The psychiatrist indicated in his addendum that a 28-day window is more commonly used in a PEth test, and he confirmed in the hearing that the PEth test is "sometimes referred to as a 30-day look back, because it can be positive for up to 30 days after the last alcohol use." Ex. 9; Tr. at 110.

At the hearing, the individual testified that, prior to the DUI arrest, beginning in approximately January 2017, he would drink three to five drinks per night, four to six nights per week. Tr. at 51. On Fridays, however, he might consume seven or eight drinks. *Id*. He stated that he would drink in his home office, away from his family, and that his wife had expressed concern regarding his alcohol consumption. *Id*. at 47, 49. However, the individual explained that immediately following his DUI arrest, he "made a commitment…that [he] was going to stop drinking altogether." *Id*. at 70. He stated that he was abstinent from alcohol until the end of July, when he experienced a stressful incident and consumed approximately three or four "swallows" from a bottle of vodka he found in his home office. *Id*. at 72-73. He explained that he realized he was not handling his stress properly, poured the vodka out, and began abstaining once more. *Id*. at 73. Three days later, he underwent his evaluation with the DOE psychiatrist and decided not to disclose the incident as he did not believe it was relevant. *Id*. at 74. He testified that he now realizes this omission was a mistake. *Id*. at 77.

He further testified that, in late September, he signed a Recovery Abstinence Agreement with his employer, which includes random alcohol testing. *Id*. at 82. He stated that he is typically tested twice per month, and he has never tested positive for alcohol. *Id*. at 82, 101. He also testified that he started attending AA meetings in late November 2017, and documented 18 meetings over approximately the subsequent two months. *Id*. at 88; Ex. F. When asked about his reasoning for attending AA, the individual explained that he was not attending because he believed he could benefit from it, but was attending because he "needed something that [he] could document, that [he] could present" at the hearing. Tr. at 91. He stated that he felt he was "voluntold" to attend AA, and that AA is "voluntary, but if I don't do it, I'm out of a job." *Id*. at 96. He explained that he does not believe he is an alcoholic and does not feel that he could participate in the 12-step program based on this belief. *Id*. at 92-94. Nonetheless, he stated that he will keep attending because it has given him "a lot of things to think about." *Id*. at 96.

The individual also explained that he attended one counseling session in January 2018, but was unable to continue due to a scheduling conflict. *Id*. at 86. He stated that he did not believe he needed it, but he felt that anyone could benefit from counseling, and he was "planning on following up." *Id*. at 99. However, he explained that he has replaced his alcohol consumption with "spending more time in prayer, meditation, and reading scriptures." *Id*. at 74.

When asked about whether he intends to abstain from alcohol in the future, the individual explained that he has spoken to his wife "about maybe…toast[ing] on anniversaries or holidays," but he did not "know that [he] even want[s] to occasionally do that." *Id*. at 78. Later in the hearing, he stated that he has "grown to the point where now, even the thought of a drink, [and he is] recoiling." *Id*. 97.

When the individual's wife testified on his behalf, she stated that, to her knowledge, the individual has been abstinent from alcohol since he was arrested in May 2017. *Id*. at 30. She indicated, however, that he informed her of a relapse, but that she was not aware of it at the time it occurred. *Id*. She testified that although the individual had a relapse due to stress, he is now handling stressful events "quite well," and he is "trying to pray and read his Bible and make notes in a journal that help him…to be meditating on when [he is] having stress." *Id*. at 36.

The wife explained that during the six-month period leading up to the arrest, she expressed to the individual that she was concerned about his alcohol consumption as "his behavior was a bit odd." *Id*. at 33. She explained that since the arrest, she has noticed that the individual seems more relaxed and she has not noticed any of the concerning behaviors that she saw prior to the arrest. *Id*. at 38. When asked about whether the individual mentioned abstaining from alcohol in the future, she stated that, "at least for now, [we are]…looking at two or three years down the road maybe returning to an anniversary bottle of wine or something." *Id*. at 42-43.

Additionally, the individual's supervisor and his pastor testified on his behalf. The supervisor stated that he has never had any issues with regard to the individual's alcohol consumption affecting his work or attendance. *Id*. at 10. The pastor testified that he and the individual have discussed the DUI arrest, and the pastor felt that the arrest has been a "humbling incident" for the individual. *Id*. at 25-26. He also noted that he has seen a change "for the good" in the individual's spirit. *Id*.

After listening to the hearing testimony, the DOE psychiatrist testified that, although the individual has made "some efforts" and "is starting to get it,…there is still a lot of denial, a lot of minimization about what has happened and about the effect that alcohol has had" on his life. *Id*. at 119. He opined that the individual is in need of a longer period of treatment, at this time. *Id*. The psychiatrist stated that the individual needs to abstain from alcohol for a period of one year, starting from his relapse in July of 2017, in order to show adequate evidence of reformation and rehabilitation. *Id*. at 121-22. However, he clarified that he no longer believes that the individual necessitates an intensive outpatient program, due to his abstinence. *Id*. at 125. When asked about a prognosis for the individual, the psychiatrist stated that due to the individual's denial and minimization of the problem alcohol poses in his life, the prognosis would be one of "fair and not good or excellent." *Id*. at 126-127.

Guideline G

Alcohol-related incidents away from the workplace, such as driving while under the influence or other incidents of concern, can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline G at ¶ 22(a). Furthermore, a diagnosis by a duly qualified mental health professional of alcohol use disorder can serve as a disqualifying condition. *Id*. at ¶ 22(d). Here, the individual was not only arrested for a DUI, but the DOE psychiatrist diagnosed the individual with Alcohol Use Disorder, Mild. He additionally opined that the individual had not demonstrated adequate evidence of rehabilitation or reformation, an opinion that the psychiatrist maintained even after he heard the testimony presented at the hearing.

At the time of the hearing, the individual had been abstinent for approximately six months and had been attending AA meetings for approximately two months. While he has been engaging in counseling through his pastor and intends to engage in additional counseling, the individual has not yet abstained from alcohol for a period of one year as recommended by the DOE psychiatrist. *See id*. at ¶ 23(d). Based on all the evidence of record in this case, I fully agree with the DOE psychiatrist, and I further conclude that his opinion is consistent with the witness testimony and my observations in this case.

For these reasons, I conclude that the security concerns under Guideline G have not been sufficiently resolved.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline G. 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 have found that the individual has not 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 not 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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals