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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: December 20, 2017 ) Case No.: PSH-17-0092  
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Issued: March 22, 2018

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 or Guidelines), I conclude that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In August 2016, the individual failed a random drug and alcohol screening when his Blood Alcohol Content (BAC) registered at .037 within two hours of arriving at work.<sup>2</sup> Ex. 3; Ex. 5 at 7; Ex. 11 at 1. Subsequently, in October 2016, the local security office (LSO) called the individual in for a Personnel Security Interview (PSI). Ex. 5. In response to information gathered at the PSI, a DOE consulting psychologist (DOE psychologist) evaluated the individual. Ex. 4.

<sup>1</sup> 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.

<sup>2</sup> The site rules require that an individual’s BAC be below .02 within two hours of arriving at work. Ex. 11 at 1 (explaining that the .02 limit is “applicable due to [the individual] beginning work at 1030 [sic] hours, i.e., in a work status of at least two hours or more at the time the test was concluded”).

Because the PSI and the DOE psychologist's evaluation did not resolve the security concerns, the LSO informed the individual in a Notification Letter dated November 13, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold 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" of the Adjudicative Guidelines (Guideline G). Ex. 3.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 1. 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 13 numbered exhibits (Exhibits 1-13) into the record and presented the testimony of the DOE psychologist. The individual introduced 15 lettered exhibits (Exhibits A-O) into the record and presented the testimony of seven 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.<sup>3</sup>

## 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 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.

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<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at that site.

### III. The Notification Letter and the Security Concerns at Issue

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 stated that it relied upon the May 2017 written evaluation by the DOE psychologist, in which she diagnosed the individual with Alcohol Dependence under the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (DSM-IV).<sup>4</sup> Ex. 3 at 1; Ex. 4 at 5. Additionally, the LSO cited that: (1) the individual's BAC was .037 in August 2016 when he was selected for a random drug and alcohol screening at work; (2) he was informed by his employer's physician in August 2016 that his "enzymes were high;" (3) in January 1998, he was charged with assault of a law enforcement officer, resisting arrest, and drunk in public; (4) in December 1998, he was charged with Driving Under the Influence (DUI); and (5) he began consuming alcohol at age 16, increasing his tolerance to the point where he could consume 8 to 12 twelve-ounce beers without becoming intoxicated. Ex. 3 at 1-2.

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

### IV. Findings of Fact and Hearing Testimony

The individual does not dispute the facts alleged in the Notification Letter. Ex. 3 at 1-2. As such, I adopt the factual allegations in the Notification Letter as my factual findings in this case.

The individual presented six character witnesses, including his wife, a co-worker, his supervisor, his Alcoholics Anonymous (AA) sponsor, his counselor, and a psychologist (individual's psychologist). The DOE presented the DOE psychologist as a witness.

Following a failed breathalyzer at work, the LSO interviewed the individual in October 2016. Ex. 5. After the PSI, the LSO referred the individual for an evaluation with the DOE psychologist, which he underwent in May 2017. Ex. 4. Based on her evaluation and utilizing the DSM-IV, the DOE psychologist diagnosed the individual with Alcohol Dependence, in early full remission. *Id.* at 4. The DOE psychologist recommended that the individual abstain from alcohol consumption for 12 months in addition to "involvement with [his company's Employee Assistance Program (EAP)] 'supported' by frequent and random . . . BAC tests." *Id.* at 5.

The individual testified that he did not realize that alcohol would still be in his system when he went to work in August 2016 and tested with the elevated BAC. Tr. at 145. The individual stressed that his sobriety date is February 5, 2017, a period of one year, as of the hearing date. *Id.* at 141. He continued that he began attending AA in early December 2017. *Id.* at 142. The individual

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<sup>4</sup> In her report, the DOE psychologist stated that the individual was diagnosed with Alcohol Dependence under both the DSM-IV and the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). Ex. 4 at 5. However, at the hearing, she explained that there is no Alcohol Dependence diagnosis under the DSM-5, but opined that the individual suffered from Alcohol Use Disorder, Mild, which she then amended, based on the other experts' testimony at the hearing, to Alcohol Use Disorder, Moderate. Tr. at 251-52.

stated that, after failing the test and being returned to duty, he occupied his time by working, thereby keeping himself “away from alcohol.” *Id.* at 184. The individual continued that when his clearance was suspended and he could no longer occupy his time with work, he began attending AA. *Id.* at 184. He asserted that he has a sponsor, who he sees at many AA meetings and talks to every evening, and is working step six of the AA 12-step process. *Id.* at 147, 157. He stated that he now has new hobbies and more energy. *Id.* at 163-64, 165.

The individual’s wife testified that he was immediately honest with her about failing the BAC test at work. Tr. at 51. She also claimed that he last consumed alcohol in early February 2017. *Id.* at 52. She asserted that he will “never drink again.” *Id.* at 53. His wife testified that there is no alcohol in their house. *Id.* at 71. She stated that she supports his decision and has attended three or four AA meetings with him. *Id.* at 54. She also testified that she has attended Al-Anon meetings.<sup>5</sup> *Id.* The individual’s wife stated that he attends eleven meetings each week. *Id.* at 57. She confirmed that the individual is on step six or seven. *Id.* She concluded that the individual did not have any withdrawals, and it is a positive step for him not to consume alcohol. *Id.* at 61, 62.

The AA sponsor testified that he became the individual’s sponsor in mid-December. Tr. at 76. He stated that they see each other at meetings, usually every day, and that they speak on the telephone every evening. *Id.* at 77. The AA sponsor also confirmed that the individual is working on step six. *Id.* He testified that the individual is engaged in the program and tries to be useful, including giving others rides to the meetings. *Id.* at 80-81. He concluded that the individual is very sincere and genuine, asserting that he realizes that “sobriety is an important part of actually being alive and living productively.” *Id.* at 86.

The individual’s co-worker and his supervisor, both of whom had to travel over two hours to attend the hearing, testified that the individual is trustworthy, honest, and reliable. Tr. at 18, 25, 30, 46. The co-worker, who has known the individual for over 20 years, stated that the individual has spoken with him about his AA attendance and about counseling. *Id.* at 17. He also stated that they socialize together and that he supports the individual’s abstinence. *Id.* at 14. The supervisor also testified that the individual has spoken about his attendance at AA. *Id.* at 26-27. He stated that the individual has not failed any of the random tests required by his enrollment in the EAP at work. *Id.* at 32. The supervisor continued that the individual has “embraced that aspect of recovery.” *Id.* at 27. He concluded that the individual has accepted responsibility for his actions, identified that alcohol was a problem for him, and taken steps to solve that problem. *Id.* at 44.

The individual’s counselor testified that she diagnosed the individual with Alcohol Use Disorder, Mild, under the DSM-5, and with Alcohol Abuse under the DSM-IV-TR. Tr. at 98, 99. She stated that he has been very compliant with all of the recommendations made to him. *Id.* at 100. The counselor asserted that he was using “Rational Recovery (RR),” which is an independent recovery plan where a person demonstrates recovery through their actions. *Id.* at 108, 137-38. The counselor explained that RR is a different model of recovery, which suggests that a person should set goals for attaining abstinence. *Id.* at 110-11. According to his counselor’s testimony, the

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<sup>5</sup> Al-Anon is a support organization for people who have been affected by another person’s alcohol consumption. <http://al-anon.org/newcomers/what-is-al-anon-and-alateen/>, accessed March 22, 2018.

individual set and attained appropriate goals, one of which was to last consume alcohol in February 2017. *Id.* at 137. She concluded that people in Rational Recovery “do a much better job and stay in recovery much longer.” *Id.* at 137. Regarding his AA attendance, the counselor stated that the individual is developing more life skills. *Id.* at 111. She concluded that he is adequately reformed and rehabilitated, and his risk of relapse is very low. *Id.* at 115, 138.

The individual’s psychologist testified that he interviewed the individual for evaluation on multiple visits between December 2017 and January 2018. *Tr.* at 194. He opined that the individual was suffering from Alcohol Use Disorder, Mild. *Id.* at 201. The individual’s psychologist also opined that the individual is “one of the most honest people that I have ever met.” *Id.* at 200. He concluded his testimony by opining that the individual’s prognosis is good because what occurred in August 2016 was a “wake-up call” for him. *Id.* at 208. He concurred with the individual’s counselor that the individual’s risk of relapse is low. *Id.* at 233.

At the hearing, the DOE psychologist opined that the individual’s prognosis is good if he follows the recommendations, including continuing with EAP, abstinence for one year, and random alcohol tests. She stated that she is impressed with his current treatment program. She concluded that the individual has a low risk of relapse.

## 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 be restored. 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). The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns exist as a result of the individual’s alcohol use. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline G at ¶ 22(b). Furthermore, a diagnosis by a duly qualified medical or mental health professional of alcohol use disorder can raise a security concern and serve as a disqualifier. *See id.* at ¶ 22(d). Here, the individual reported to work in an impaired condition and the DOE psychologist opined that he suffers from alcohol use disorder.<sup>6</sup> In addition to his most recent alcohol-related incident at work, the individual had two alcohol-related arrests in 1998, was told by his employer’s physician in August 2016 that his “enzymes were high,” and increased his alcohol tolerance since he began consuming alcohol at age 16. Accordingly, security concerns exist pursuant to Guideline G.

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<sup>6</sup> As noted previously (fn. 4), the DOE psychologist diagnosed the individual with Alcohol Use Disorder, Moderate, under the DSM-5, after hearing the other experts’ testimony. *Tr.* at 251-52. The individual’s counselor and his psychologist both diagnosed the individual with Alcohol Use Disorder, Mild. *Tr.* at 98, 201.

The Guidelines provide that the following conditions (in relevant part) may mitigate security concerns: (1) the individual acknowledges his or her 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; and (2) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program. Guideline G at ¶ 23(b) and (c).

In the present case, the individual has readily acknowledged his pattern of maladaptive alcohol use, he has provided evidence of positive actions taken to overcome his problem (such as engaging in counseling, utilizing RR, and actively engaging in AA, attending 11 meetings a week), and he has demonstrated a clear and established pattern of abstinence since February 2017. Accordingly, the individual has demonstrated mitigation of the concerns, pursuant to Guideline G at ¶ 23(b). Similarly, the individual has demonstrated that he is engaged in counseling, has no previous history of treatment and relapse, and is – according to all experts who testified – making satisfactory progress in treatment, to the point where the DOE psychologist opined that the individual has a low risk of relapse. Accordingly, he has demonstrated mitigation of the concerns, pursuant to Guideline G at ¶ 23(c) as well.

For these reasons, I find that the individual has resolved the security concerns under Guideline G.

## **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 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 under Guideline G. Accordingly, I have determined that the individual's access authorization should be restored. Either party may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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