

*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)	
)	
Filing Date: January 3, 2018)	Case No.: PSH-18-0003
)	
_____)	

Issued: May 2, 2018

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXX XXX XXXX (hereinafter referred to as “the individual”) to hold 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 *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 March 2017, the individual self-reported that he had voluntarily admitted himself into a psychiatric hospital for six days and five nights. Ex. 6; *see* Ex. 9 at 14. As a result, the local security office (LSO) held a Personnel Security Interview (PSI) with the individual in May 2017. Ex. 9. In response to information gathered at the PSI, a DOE consulting psychologist evaluated the individual. Ex. 7.

Because the psychologist’s evaluation raised unresolved 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

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.

information raised security concerns under Guideline G (alcohol consumption) and Guideline I (psychological conditions) of the Adjudicative Guidelines. Ex. 1.

Upon 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 DOE Counsel submitted ten numbered exhibits (Exhibits 1-10) into the record and presented the testimony of the DOE psychologist. The individual did not introduce any exhibits into the record, but presented the testimony of seven witnesses, including himself. The exhibits will be cited in this 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.

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 Guidelines G and I 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 August 2017 written evaluation by the DOE psychologist, which stated that “laboratory tests confirm[ed] the suspicion that [the individual] ha[d] been heavily and

likely consuming alcohol. Such consumption would impair [the individual's] judgment, as well as his reliability and trustworthiness." Ex. 1. The LSO additionally cited the written evaluation which stated that the individual showed no indication of reformation, as laboratory results demonstrated that the individual "continued to drink recently." *Id.* As a further indication of a lack of reformation, the LSO relied upon the evaluation's determination that the individual's "apparent deception about the degree of his consumption also indicates that he is willing to hide his drinking." *Id.*

Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b). With respect to Guideline I, the LSO relied upon the DOE psychologist's conclusion that the individual's "willingness to look DOE personnel and [the psychologist] in the eyes and be deceptive about his use of alcohol is a mental condition that can impair his trustworthiness." Ex. 1.

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

IV. Findings of Fact

The individual denied the allegations in the Notification Letter and sought to mitigate any security concerns. Ex. 2 at 1. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

Following the March 2017 mental health hospitalization, the LSO interviewed the individual in a May 2017 Personnel Security Interview (PSI). During the PSI, the individual stated that his current alcohol consumption amounted to approximately four times per month, with two to three beers per week. Ex. 9 at 39. However, the interviewer expressed some concern that this reported amount of consumption appeared discrepant from the frequency of consumption the individual reported to the Office of Personnel Management (OPM) investigator, which was eight to ten times per year. *Id.* at 50. The individual explained that he may have misunderstood the OPM investigator's question, thinking that the investigator was inquiring into the number of times the individual drank to the point of intoxication. *Id.* The individual additionally explained that the last time he had consumed alcohol was three days before the PSI, when he consumed approximately four beers. *Id.* at 40-41.

In July 2017, the individual underwent a psychological evaluation performed by the DOE psychologist. Ex. 7 at 5. In the August 2017 psychological report, the psychologist noted that the individual reported that his current alcohol consumption was approximately "six light beers a week with no more than two on an occasion." *Id.* The psychologist noted that this most recent report of typical consumption was discrepant from both the PSI and the statement to OPM. *Id.* During the evaluation, the individual reported that the last time he had consumed alcohol was about a week prior to the May 2017 PSI. *Id.*

As part of the psychological evaluation, the psychologist administered three laboratory tests: ethyl glucuronide (EtG), ethyl sulfate (EtS), and the phosphatidylethanol (PEth) test.² *Id.* The EtG test was negative; however, the EtS and PEth tests came back positive. The psychologist explained that “[i]n contrast to [the individual’s] claim of having been alcohol abstinent since early May, the tests indicate that he has been in fact heavily consuming alcohol over the last several weeks.” *Id.* at 6. He found that the laboratory tests “confirm the suspicion that [the individual] has been heavily and likely frequently consuming alcohol. Such consumption would impair his judgment, as well as his reliability and trustworthiness.” *Id.* at 7.

The psychologist determined that, as shown by the EtS test, the individual “has continued to drink recently therefore providing no evidence of reformation.” *Id.* He noted that the individual’s “apparent deception about the degree of his consumption also indicates that he is willing to hide his drinking, further indication of no reformation.” *Id.* In order to show adequate evidence of rehabilitation or reformation, the psychologist recommended that, “for confidence in [the individual’s] ability to control his use of alcohol, he would need to demonstrate that he can remain abstinent for a minimum of 12-months.” *Id.* The psychologist added that “[m]ore confidence in his self-control would be gained if he were to complete an IOP [Intensive Outpatient Program] and participate in the weekly aftercare meetings for at least nine months.” *Id.* at 8.

Along with his determination with regard to alcohol, the psychologist found that the individual has “a mental condition that can impair trustworthiness. His willingness to look DOE personnel and [the psychologist] in the eyes and be deceptive about his use of alcohol needs to be addressed in verbal therapy.” *Id.* The psychologist determined that without such therapy, the individual “is very likely to persist in misrepresenting his behavior and therefor[e] will not be reliable or trustworthy.” *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 has not sufficiently mitigated the security concerns noted by the LSO with regard to Guideline G. 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). Therefore, I have determined that the individual’s security clearance should not be restored. 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 DOE psychologist’s evaluation.

At the hearing, the individual’s friend of 15 years testified on his behalf. Tr. at 12. The friend, who is a recovering alcoholic himself, stated that he had never had concerns about the individual’s

² According to the psychological evaluation, the “EtG is a metabolite of ethyl alcohol that is present in the urine for up to 80 hours after any alcoholic beverage is consumed.” The EtS test is “another indicator of recent (in the past 96 hours) alcohol use.” While the evaluation does not explain the purpose of the PEth test, it reports that the individual’s positive result of 602 ng/mL “correlates with heavy alcohol use on a regular basis.” *Id.* at 5-6.

drinking habits; however, around late summer of 2017, the friend “saw a big-time transformation in him, in the sense that” the individual could attend events where alcohol was being served and abstain from drinking it. *Id.* at 14, 16-17. The friend testified that, although he did not know the exact date that the individual stopped drinking, the individual had not consumed alcohol for “several months.” *Id.* at 25. The friend stated that the individual now spoke of being “clear-headed” and enjoying life. *Id.* at 17. The friend noted that, despite many stressors in the individual’s life, including learning of multiple cancer diagnoses of immediate family members and the grave injury of a grandparent, the individual did not relapse and continued to be positive about his abstinence. *Id.* at 18. The friend explained that he was aware that the individual started an Intensive Outpatient Program (IOP) and had transitioned into aftercare. *Id.* at 32-33. The friend also noted that the individual’s attitude toward the IOP and aftercare had been “great,” and that the individual stated that he was “going to make the most out of it and...learn as much as” possible. *Id.* at 33. Finally, the friend explained that the individual is “one of the most honest people, with the...most amount of integrity.” *Id.* at 19.

Another of the individual’s friends testified, echoing the testimony of the first friend, stating that he did not have concerns about the individual’s alcohol consumption. *Id.* at 62. He elaborated that in the autumn of 2017, the individual was “mostly” not drinking at all, and then in January of 2018, the individual “completely quit.” *Id.* at 65. The witness opined that the individual is now “happier and in a better place.” *Id.* at 68. He further explained that the individual expressed that the IOP had been “really good for [him]” and has nothing negative to say about it. *Id.* at 66-67.

The individual’s supervisor and one of his work peers also testified. Both stated that they have never had concerns about the individual’s honesty or his alcohol consumption. *Id.* at 39-40, 42, 47, 49, 52, 54-55.

The individual’s ex-wife testified, and she explained that she and the individual had been married for six years prior to divorcing, and she never felt that there was a problem with the individual’s alcohol consumption. *Id.* at 73-74. She elaborated that she was hypersensitive to alcohol use as she came “from a family of alcoholics;” however, her divorce from the individual was in no way associated with his alcohol use. *Id.* at 74. She recalled that when she separated from the individual in the spring of 2017, she noticed that for a few months, he was consuming more alcohol; however, around September, the individual “realized that he needed to make some changes in his life.” *Id.* at 86-87. To the best of her knowledge, the individual had been completely abstaining from alcohol for the previous few months. *Id.* at 87. She further noted that she never felt that the individual was dishonest with her. *Id.* at 86.

When the individual took the stand to testify on his own behalf, he explained that, at the time of the PSI in May of 2017, he was still consuming alcohol, and after the PSI, his drinking escalated due to the trauma and pressure of his divorce. *Id.* at 101. He described that this increased level of drinking continued until he underwent the evaluation with the DOE psychologist, which was when he realized that DOE was concerned about his alcohol consumption. *Id.* at 101-102. He then told himself that “there are more important things in life than drinking, and you’re going to have to stop that.” *Id.* at 102. In turning to the psychological evaluation, the individual acknowledged that he told the psychologist that he had not consumed alcohol since May of 2017. *Id.* at 104. He explained that he made the statement because he was nervous, and at the time, he did not fully understand DOE’s concerns. *Id.* The individual indicated that when he realized DOE was concerned about his

alcohol use, he “kind of panicked.” *Id.* at 105. However, he noted that the honest response would have been that he had last consumed alcohol around the weekend prior to the psychological evaluation, when he likely consumed two to three drinks. *Id.* at 106-107. He further elaborated that, around the time of the evaluation, his typical consumption would be approximately 6-8 beers on the weekends. *Id.* at 108.

Subsequent to the evaluation, the individual explained that when he went to complete the laboratory tests, he realized the severity of the situation and implemented a “slow decline” in his alcohol consumption. *Id.* at 110. Around late December of 2017, he sought out the help of an attorney and an IOP. *Id.* The individual explained that the IOP was six weeks in duration, meeting four nights per week for approximately 3 hours each night. *Id.* at 112. The individual clarified that the IOP prohibited the consumption of alcohol and was a “very informative and helpful class.” *Id.* at 111-112. He further noted that, after he successfully completed the IOP, he started the aftercare program two weeks prior to the hearing and had attended two sessions by the time of the hearing. *Id.* at 114, 131. The individual testified that he has not consumed alcohol since January 27, 2018, and intends to remain abstinent. He also explained that he is undergoing individual counseling. *Id.* at 127, 129.

When asked about the finding in the psychological evaluation that he had a mental condition, the individual explained that he was hurt upon reading this and feels that he is not a deceptive person. *Id.* at 134. He expressed that he did not understand why the DOE psychologist “would make such a comment like that.” *Id.* at 133.

Following the testimony of the lay witnesses, each party presented an expert witness. The individual presented his individual counselor. The counselor testified that, in addition to providing counseling services, he works with the IOP through the Employee Assistance Program. *Id.* at 139. The counselor indicated that he first worked with the individual in early February 2018 and continued to work with him throughout the IOP. *Id.* at 139-140. The counselor testified that the individual developed relationships with other participants of the IOP and took part in a “group cohesiveness that was unique to his group.” *Id.* at 141. The counselor explained that the individual engaged in a process of trying to understand the teachings of the IOP and relate them to his personal situation. *Id.* at 147-148. He also noted that there is a group of people from the IOP, including the individual, that meet weekly outside the program, and this was the first time in the counselor’s five years with the program “to see multiple people come together in that way following the IOP group and develop their own support.” The counselor stated that such an occurrence is “exciting” and “vital” to the individual’s growth. *Id.* at 150.

Despite the individual’s positive improvements, the counselor noted that he diagnosed the individual with alcohol use disorder and clarified that the individual is in his first 90 days of abstinence, and that early remission does not occur until 12 months. *Id.* at 155; 159. As such, the counselor explained that the individual “is not out of the woods.” *Id.* The counselor stated that “it’s going to be a little while before I really relax, but I’m cautiously optimistic,” given the work that the individual has done thus far. *Id.* at 156. However, the counselor noted that people “feel good when [they] get the benefits of recovery, but there are walls that [they] hit, and real life needs to happen” for the individual. *Id.* at 158. The counselor clarified that, given the medical circumstances of the individual’s family, “he’s going to get a really good test, ...and we’re going to see his ability

to cope.” *Id.* Nonetheless, the counselor felt the individual had a positive prognosis over the next 18- to 24-month period. *Id.* at 159.

With regard to trustworthiness, the counselor stated that “more often than not” it is common for people with an alcohol problem to lie about the amount of their consumption. *Id.* at 163-164. He explained that he felt the individual “minimized or was unaware of the level of alcohol abuse he was involved in,” but with regard to trustworthiness, he stated that he had “no basis to support anything broader than that.” *Id.* at 165.

The DOE psychologist testified last, after hearing all of the preceding testimony. The psychologist explained that he did not diagnose the individual with alcohol-related disorder pursuant to the DSM; however, the results from the EtS and PEth tests indicated heavy drinking. *Id.* at 192. The psychologist stated that alcohol can interfere with personality in “people who drink a lot,” and the witnesses at the hearing testified to noticing a change in the individual’s personality when he stopped consuming alcohol. *Id.* at 174. Further, the psychologist noted that the individual had only been abstinent for 68 days, slightly over two months, and the evaluation recommended that the individual needed to remain abstinent for 12 months. *Id.* at 176. The psychologist opined that the individual has a “fairly positive high prognosis” for “keeping his drinking under control,” but he believes that the individual will likely begin consuming alcohol again in the future. *Id.* at 178.

With regard to the psychologist’s determination that the individual’s deceptiveness about his alcohol use constituted a mental condition that can impair trustworthiness, the psychologist noted that he does not believe that the individual lies “generally,” but that he lied “when his back [was] against the wall.” *Id.* at 197-198. The psychologist explained that “if a person tells one lie when [his] back is against the wall, the chances are that that’s what [he does] when [his] back is really against the wall.” *Id.* at 195. As such, he opined that the individual “is not trustworthy when his back is against the wall.” *Id.* at 196.

A. Guideline G

A diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder, or habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with an alcohol use disorder, can raise security concerns and serve as a disqualifier. *See* Guideline G at ¶¶ 22(a)(c). Here, two medical experts concluded that the individual’s alcohol consumption was concerning. The individual’s counselor diagnosed him with alcohol use disorder and the DOE psychologist determined that the individual had been drinking heavily and likely frequently to a degree that would impair his judgment. Tr. at 159; Ex. 7 at 7. Both experts also indicated that the individual was still at an early stage in his recovery process.

The DOE psychologist stated that the individual needed to demonstrate that he was able to remain abstinent for a minimum of 12-months. Ex. 7 at 7. He also recommended that the individual complete an IOP and participate in weekly aftercare for a least nine months. *Id.* at 8. Although the individual successfully completed the IOP and had been attending the aftercare, in spite of his weekly attendance, he was only able to complete two aftercare sessions by the date of the hearing. Furthermore, he had only been abstinent from alcohol for a period of 68 days. The individual’s

own counselor cited the brevity of the individual's recovery thus far, stating that the individual needed to experience "real life" in order "to see his ability to cope." Tr. at 158.

In spite of the individual's notable efforts to address the alcohol-related security concerns, due to the brevity of his abstinence thus far, I conclude that the security concerns under Guideline G have not been sufficiently mitigated.

B. Guideline I

Certain personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27. Here, the individual admitted that he provided a dishonest answer to the DOE psychologist, a situation which could prevent the individual from continuing to hold his access authorization. Tr. at 122. Based on the individual's willingness to be deceptive with regard to his alcohol use, the DOE psychologist concluded that the individual has "a mental condition that can impair his trustworthiness." Ex. 7 at 8.

As noted, the LSO did not cite the individual's provision of false information as a security concern, even though the provision of false information falls under the purview of Guideline E.³ Instead, the LSO chose to cite Guideline I.

Nonetheless, "persons with active substance use disorders often minimize their alcohol use." *Personnel Security Hearing*, Case No. TSO-0295 (2006); *see Personnel Security Hearing*, Case No. PSH-17-0016 (2017); *Personnel Security Hearing*, Case No. PSH-17-0075 (2018). This appears to explain the individual's behavior here. While the individual was deceitful about his use of alcohol, nothing in the record indicates that the individual is deceitful in any other aspect of his life. To the contrary, not only did the individual's witnesses, including his ex-wife, testify to his honesty, but the DOE psychologist explained that he did not believe the individual "lied generally." Tr. at 197. For these reasons, I find that the individual has resolved the security concern under Guideline I.

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 Guidelines G and I. 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 not be 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.

³ "[D]eliberately providing false or misleading information; or concealing or omitting information concerning relevant facts to...[a] competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination" can disqualify an individual from holding an access authorization. Guideline E, ¶ 16 (b).

Katie Quintana
Administrative Judge
Office of Hearings and Appeals