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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: January 25, 2019) Case No.: PSH-19-0004
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Issued: April 10, 2019

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position requiring that he hold a security clearance. In 2017, the Individual completed a Questionnaire for National Security Positions (QNSP), which omitted certain criminal violations that had been reported on his previously completed QNSP in 2006. The 2017 QNSP also listed multiple criminal violations that had occurred within the last decade. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual, after which he was referred to a DOE Consultant Psychologist (Psychologist) for evaluation. The Psychologist concluded that the Individual habitually binged or consumed alcohol to excess.

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. See 10 C.F.R. § 710.21. 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 in this matter on January 28, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of five

¹ Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

witnesses and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-19-0004 (hereinafter cited as “Tr.”). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted four exhibits, marked as Exhibits A through D.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s overarching adjudicative goal is reach a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration.

Guideline G (Alcohol Consumption) states: “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.” Adjudicative Guidelines at ¶ 21. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22. The LSO alleges that the Individual was arrested and charged with Driving While Intoxicated (DWI) in 2010 after consuming at least 10 shots of whiskey in a two to three hour period; was arrested and charged with Driving Under the Influence of Alcohol in May 2005 after consuming eight beers; was arrested and charged with Consumption of Alcohol as a Minor and with Public Intoxication in April 2005; and was arrested and charged with Consumption of Alcohol as a Minor and with Public Intoxication in April 2004. The LSO also alleges that, in September 2018, a Psychologist concluded that the Individual habitually binged or consumed alcohol to the point of impaired judgment, without adequate evidence of rehabilitation. Accordingly, the LSO’s security concerns under Guideline G are justified.

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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual has been arrested for and charged with several alcohol-related crimes. In 2004 and 2005 the Individual was arrested and charged with separate counts of Consumption of Alcohol as a Minor and Public Intoxication. Ex. 1. About a month after his 2005 Public Intoxication and underage drinking charges, the Individual was arrested and charged with Driving Under the Influence of Alcohol; he had consumed at least eight beers before he began driving. *Id.* Finally, in 2010, the Individual drove after consuming at least 10 shots of whiskey and was involved in a single car accident. Ex. 1; Ex. 6 at 2. He was arrested and charged with DWI. Ex. 1.

In September 2018, the Individual was evaluated by the Psychologist. Ex. 6. At that time, he described his alcohol consumption as “rare.” *Id.* at 3. He stated that he would drink one to two beers with dinner once or twice per month and would, on occasion, consume six 12 oz. beers with a friend. *Id.* He reported that he last drank to intoxication over Labor Day weekend or mid-July 2018. *Id.* at 3–4. In the report, the Psychologist claimed that the blood tests conducted on the day of his evaluation were consistent with much heavier and more recent alcohol consumption. *Id.* at 4. For this reason, the Psychologist concluded that the Individual was likely underestimating the quantity and frequency of his alcohol consumption. *Id.* at 5. She opined that the discrepancy between the Individual's self-report and his laboratory test results put his judgment in question and made his excessive alcohol consumption a concern. *Id.* Though she did not diagnose the Individual with an Alcohol Use Disorder, the Psychologist concluded that the Individual habitually binged or consumed alcohol to the point of impaired judgment. *Id.* The Psychologist concluded that the

Individual was not rehabilitated or reformed because he had not demonstrated a period of abstinence from alcohol. *Id.* She recommended that, to achieve rehabilitation, the Individual should attend a six week Intensive Outpatient Treatment program (IOP) and attend three Alcoholics Anonymous (AA) meetings per week for a period of one year. *Id.*

At the hearing, the Individual presented the testimony of his girlfriend, his friend and colleague, his supervisor, his mother, and his counselor. The girlfriend testified that the Individual had received the Psychologist's report on January 9, 2019, but had been abstinent since January 1, 2019. Tr. at 17. She was supportive of the Individual, attending family nights at his IOP and remaining abstinent in solidarity with the Individual. *Id.* at 18–22. She testified that the Individual was open-minded about the IOP and that, having finished his IOP, he attended aftercare once weekly and AA twice weekly. *Id.*

The friend had known the Individual for about two years. Tr. at 32. They met in training for the job they now hold. *Id.* The friend testified that during training, they had been warned about the dangers of drunk driving and had made a pact to pick each other up anytime, anywhere, if they were too intoxicated to drive. *Id.* at 34, 43. The friend further testified that the Individual had not been interested in consuming alcohol with his friends starting in November or December 2018. *Id.* at 35–36. He described the Individual as trustworthy and responsible. *Id.* at 37.

The supervisor described the Individual as a self-motivated hard worker and had no concerns about his trustworthiness, judgment, or honesty. Tr. at 48–49, 52. He testified that the Individual had never come to work with alcohol on his breath and that he did not believe the Individual had been under the influence of alcohol at work. *Id.* at 50–52.

The Individual's mother had not seen him since December 2018, but testified that when she saw him at Christmas, he did not consume alcohol. Tr. at 60, 71. The last time she saw him consume alcohol was at Thanksgiving, when he consumed about two beers. *Id.* at 71. She had never seen the Individual intoxicated. *Id.* She testified that the Individual shared extensively with her about the IOP and AA and that he used to call her every day on his way to the IOP. *Id.* at 69. She testified that the Individual has a good attitude and that she believes he is committed to abstinence. *Id.* at 69–70.

The Individual received the Psychologist's report just after Christmas and consumed alcohol for the last time on New Year's Eve. Tr. at 75, 92. He quickly implemented the recommendations contained therein by enrolling in an IOP and starting to attend AA. *Id.* at 75, 103. The Individual engaged deeply with his recovery programs. *Id.* at 75–80. The IOP taught him about the importance of communication in his life and helped him identify and overcome cultural influences in his life that discourage open communication. *Id.* The Individual learned in the military that he could control anything through discipline, but the IOP taught him that if a person continues drinking after having an issue with alcohol, then they have a problem and need help. *Id.* at 76.

The Individual continued to attend AA after finishing his IOP. Tr. at 94–95. He also attended the IOP's weekly aftercare sessions and testified that he intends to attend those sessions indefinitely. *Id.* at 98. He testified that he intended to get a sponsor and work the 12 steps of AA. *Id.* at 97–98. The Individual's family and friends supported his sobriety and the Individual intended to remain abstinent indefinitely. *Id.* at 92.

The Individual's counselor did not disagree with the Psychologist's report. Tr. at 127. She agreed that the Individual did not meet the criteria for Alcohol Use Disorder. *Id.* at 126. The Individual's counselor testified that the Individual has a good prognosis for remaining abstinent. *Id.* at 124–25. She testified that the Individual is rehabilitated from consuming alcohol to impairment and that he has a low probability of returning to alcohol consumption. *Id.* at 125, 130. She also testified that the Individual has internalized the alcohol education he received at the IOP and has put accountability and support systems in place for himself. *Id.* at 117–19, 133. The counselor testified that the Individual's rehabilitation began years ago after his last alcohol-related arrest. *Id.* at 134–36. Over the following nine years, the Individual grew and changed. *Id.* The IOP gave him the education necessary to be rehabilitated. *Id.* at 133.

In her testimony, the DOE Psychologist stated that her report contained oversights. Tr. at 143–43. She testified that the results of the Individual's blood test were actually consistent with his self-reported alcohol consumption, despite her original use of perceived inconsistent results as the basis for her diagnosis. *Id.* at 164. The Psychologist testified that she could not differentiate between rehabilitation and reformation. *Id.* at 142. However, she believed that it was too early to tell whether the Individual would remain abstinent. *Id.* at 141. The Psychologist defined an alcoholic as an individual who has an Alcohol Use Disorder. *Id.* at 152. Though she did not diagnose the Individual with an Alcohol Use Disorder, she repeatedly refused to opine on whether she thought the Individual was an alcoholic. *Id.* at 155–56.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual's alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or

abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established a pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual's alcohol-related crimes happened nearly a decade ago and he has not had legal troubles with alcohol since. Such crimes appear unlikely to recur and no longer cast doubt on his judgment, trustworthiness, or reliability. The crux of the issue before me in this matter is whether the Individual has reformed or rehabilitated himself from his prior behavior of habitually bingeing or consuming alcohol to excess.

There is evidence before me that indicates that the Individual acknowledged his alcohol problem and took action, through the IOP and AA, to overcome his problem. He began abstaining from alcohol since January 1, 2019 (before receiving the report telling him to do so) and has maintained his abstinence since that time. He has completed an IOP, is continuing his progress in AA and aftercare and has no apparent history of relapse. His recovery efforts are laudable.

As additional evidence of rehabilitation or reformation, the Individual presented testimony from his counselor opining that he was now rehabilitated. Nonetheless, despite her testimony that the Individual had begun his rehabilitation "years ago," she had not observed the Individual's pre-IOP reformation efforts. Accordingly, her testimony that he had been recovering for several years is unpersuasive.

In contrast to the Individual's counselor's testimony, the DOE Psychologist testified that it was too early to tell whether the Individual had a good prognosis. However, she had limited working knowledge of the Adjudicative Guidelines, had written a report that drew conclusions based on an erroneous interpretation of medical testing, and had not observed the Individual's recovery. For these reasons, her testimony is also unpersuasive.

Due to the strong presumption against granting a security clearance, it is not enough for the Individual to show that the DOE Psychologist's testimony is unpersuasive; he must show that there is little doubt as to whether the DOE's security concerns are mitigated. Giving no weight to the unpersuasive testimony of the counselor and Psychologist, the balance of the remaining evidence indicates that the Individual has not met this difficult burden. I find witness testimony about his abstinence since January 1, 2019, credible, as well as encouraging. However, I find that, as of his hearing date, the Individual had less than three months of sobriety. Given this finding, I cannot conclude that the Individual has established a sufficient pattern of abstinence to resolve the Guideline G security concerns. This is especially so given the relatively lengthy period of alcohol misuse. The individual has made great strides in his recovery. Nevertheless, the risk of relapse remains high in the early stages of recovery and some doubt remains regarding his future alcohol use. Therefore, I cannot find that the Individual has fully resolved the DOE's Guideline G concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those

concerns. Therefore, I cannot conclude that granting DOE access authorization to the Individual “will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals