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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: August 5, 2019) Case No.: PSH-19-0044
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Issued: October 31, 2019

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 and held a security clearance. His employer requested that the Individual be granted a higher “Q” level security clearance. During the investigation regarding the application to upgrade the Individual’s clearance, derogatory information was uncovered as to the Individual’s fitness to hold a clearance of any level. The Individual underwent a Personnel Security Interview, after which he was referred to a DOE-consultant psychiatrist (the Psychiatrist) for evaluation. Ex. 5; Ex. 7. The Psychiatrist opined that the Individual habitually consumed alcohol to impairment without adequate evidence of rehabilitation or reformation. Ex. 5 at 6–7.

The Local Security Office (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 hold 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 August 6, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of four witnesses. The LSO presented the testimony of the DOE psychologist who had evaluated

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.

the Individual. *See* Transcript of Hearing, Case No. PSH-19-0044 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8 (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 to issue 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. *Id.* at ¶ 22.

The LSO alleges that the Individual admitted to drinking four-and-a-half ounces of vodka nightly since October 2017, admitted to drinking to intoxication two to three times per month since 2013; admitted that in 2007 he violated his probation on multiple occasions by drinking alcohol; and admitted to being written up for violating a school policy prohibiting underage drinking in 2006. Ex. 1 at 1. The LSO further alleges that, in September 2018, a DOE-consultant psychiatrist concluded that the Individual habitually consumed alcohol to the point of impaired judgment, without adequate evidence of rehabilitation or reformation. *Id.* 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

At the hearing on October 2, 2019, the Individual presented the testimony of a friend, his manager, a current coworker, and a former coworker. The friend had known the Individual for over 25 years and they saw each other socially about once a month, and communicated via text message weekly. Tr. at 10–11. The friend testified that the Individual occasionally consumed alcohol at evening events. *Id.* at 12. He considered the Individual to be reliable and trustworthy, and to have excellent judgment. *Id.* at 16. He never considered the Individual's drinking to be problematic. *Id.* at 16–17. He believed the Individual had been abstaining from alcohol since September 9, 2019.² *Id.* at 23.

The former coworker testified that he had known the Individual for five or six years. Tr. at 33. They stopped working together two or three years ago, but they still communicate occasionally via text message and attend social events from time to time. *Id.* at 33–34. The former coworker had never seen the Individual drink alcohol—even at events where alcohol was served—and had no information on the Individual's alcohol consumption habits. *Id.* at 35. The former coworker stated unequivocally that he found the Individual to be reliable and trustworthy. *Id.* at 36.

The manager had known the Individual for about three years. Tr. at 45. The manager had no knowledge of whether the Individual consumed alcohol outside of work. *Id.* at 47. He found the

² Earlier, the friend testified that he last saw the Individual consume alcohol in August 2019. Tr. at 12. The difference in these dates is not material to my decision in this matter.

Individual to be trustworthy and very reliable. *Id.* He testified that the Individual handles himself well under stress. *Id.*

The current coworker met the Individual in college and stated that they were roommates for part of that time. Tr. at 53. He testified that they currently shared an office and saw each other daily at work and about three times per month socially. *Id.* at 54. He had seen the Individual consume alcohol sparingly in recent years. *Id.* at 56. The last time the current coworker had seen the Individual become intoxicated was the summer of 2018. *Id.* He testified that the Individual is trustworthy and reliable. *Id.* at 57–58. He further testified that the Individual had been moderating his alcohol intake in recent months, stopping after two drinks even if others decided to keep drinking. *Id.* at 58–59.

The Individual did not dispute any of the allegations in the Notification Letter or any of the facts in the Psychiatrist’s Report. Tr. at 64–65. He testified that he had not been honest during his PSI and psychiatric evaluation. *Id.* at 65. While he was truthful about social consumption during the psychiatric evaluation, he had omitted describing his alcohol consumption while alone. *Id.* at 66. He also omitted his solitary consumption of alcohol during his PSI, even though he had signed a statement attesting to the truthfulness of his statements. *Id.* at 78. The Individual testified that he began drinking alone—about 3.5 ounces of vodka per night—after going through a difficult breakup. *Id.* at 67–68. Because he had submitted to a PEth blood test³ as part of the psychiatric evaluation, he researched what the PEth test would reveal about his past alcohol consumption. As a result, he notified the Psychiatrist of his omissions concerning his alcohol consumption. *Id.* at 65–66; *see* Ex. 5 at 4. Had he not researched the PEth test, he likely would not have disclosed his full alcohol consumption to the Psychiatrist.⁴ *Id.* at 71. The Individual testified that, after the psychiatric evaluation, his home consumption tapered off to about two or three drinks per night on weekends. *Id.* at 74–75. His social drinking and weekend drinking continued until August 2019. *Id.* at 76–77. He testified that he modified his drinking because he knew he might have to take a PEth test at any time. *Id.* at 77.

The Individual testified that he was ashamed and embarrassed by his home alcohol consumption. Tr. at 87. He stated that he had since learned mechanisms, such as restrictive dieting, meal preparation, and exercising, to cope with the breakup that triggered his home alcohol consumption. *Id.* at 82, 90.

The Individual received the Psychiatrist’s report in June 2019 and, having determined that success in Personnel Security cases is often influenced by adherence to Psychologists’ or Psychiatrists’ recommendations, he began seeing a counselor shortly after that. Tr. at 79, 83–84. His last drink was August 23, 2019, and he had attended a single meeting of Alcoholics Anonymous (AA). *Id.* at 73. On September 3, 2019, he started attending a support group for addiction recovery on a weekly basis. *Id.* at 82. The Individual did not plan to resume drinking after remaining abstinent for the nine months recommended by the Psychiatrist. *Id.* at 90. He testified that, since receiving the

³ A PEth test is a blood test for phosphatidylethanol (PEth), a biological marker of alcohol use. The PEth test indicated that the Individual had engaged in past moderate to heavy alcohol consumption. Ex.5 at 5.

⁴ The Individual also testified that while on a pretrial diversion program regarding an arrest for theft which prohibited his consumption of alcohol, he had been caught at a bar by the Assistant District Attorney who was supervising his pretrial diversion program. Tr. at 88-89; Ex. 7 at 35-36.

Psychiatrist's report, he had been a nervous wreck, wondering if he was doing enough to receive a favorable outcome from the hearing. *Id.*

The Psychiatrist testified that his opinion, set forth in his report, has not changed. Tr. at 103–04. He did not believe that the Individual was rehabilitated, as of the hearing date. *Id.* at 105. He was particularly concerned that the Individual continued drinking after having to admit his dishonesty to the Psychiatrist and after receiving the Psychiatrist's report recommending abstinence. *Id.* at 104. He testified that the Individual would have a fair prognosis, provided that he follows the treatment program he is currently on (individual counseling, the support group, and abstinence). *Id.* at 105. However, the Individual had not yet come close to completing the recommended nine months of treatment. *Id.* at 102.

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 of 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 the granting of a security clearance if I am not convinced that the LSO's security concerns have been mitigated such that granting the Individual a security 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 pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual has made progress toward recovery. However, his progress is not sufficient to mitigate the Guideline G security concerns. His alcohol use is recent enough that I cannot consider relapse to be an unlikely prospect, and his lack of candor regarding his alcohol use still casts a pall over his current reliability, trustworthiness, and judgment. Similarly, 40 days of sobriety is an insufficient amount of time to demonstrate an established pattern of abstinence. Finally, the Individual's progress with his treatment and counseling is mixed. He continued to consume alcohol

for over a month after beginning counseling, despite the Psychologist's recommendation of abstinence, and he began attending the support group only a month before the hearing. His treatment and counseling progress are too new for me to find it satisfactory to resolve the Guideline G security concerns.

For the foregoing reasons, I find that the Individual has not mitigated the security concerns raised under Guideline G.

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 the Individual an access authorization 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.

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