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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: November 19, 2019 ) Case No.: PSH-20-0010  
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Issued: March 5, 2020

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**Administrative Judge Decision**  
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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> 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 should not be granted access authorization.

**I. Background**

A DOE contractor (Contractor) employs the Individual in a position that requires him to hold a security clearance. The Individual completed a Questionnaire for National Security Positions (QNSP) in July 2017 and completed a Letter of Interrogatory (LOI) in May 2019. Ex. 5 at 1. Based on the information the Individual provided pertaining to his alcohol consumption and a prior diagnosis, the Local Security Office (LSO) recommended that the Individual undergo a psychological evaluation. Ex. 7. A subsequent report regarding the Individual was compiled by a DOE consulting psychologist (DOE psychologist). *Id.* The DOE psychologist concluded that the Individual was engaging in habitual and/or binge drinking. *Id.* at 5.

Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter, dated September 27, 2019, (Notification Letter) that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance.

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<sup>1</sup> The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The DOE counsel submitted nine numbered exhibits (Ex. 1–9) into the record. The Individual submitted eight exhibits (Ex. A–H). The DOE presented the testimony of the DOE psychologist and the Individual presented the testimony of two witnesses, including his own testimony. 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. The Notification Letter and the Associated Security Concerns**

The Notification Letter informed the Individual that it possessed derogatory information concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines.

The Adjudicatory 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 relates to security risks arising from alcohol consumption. As the Adjudicative Guidelines state, “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. In asserting Guideline G as the basis for denying the Individual a security clearance, the LSO cited a report compiled by the DOE psychologist as well as the Individual’s answers in the May 2019 LOI. Ex. 1 at 1. The Summary of Security Concerns stated that the DOE psychologist concluded that the Individual “habitually and/or binge consumes alcohol to the point of impaired judgment” and had not demonstrated adequate evidence of rehabilitation in terms of his drinking. *Id.* at 1. The LSO further indicated that the Individual admitted to drinking a couple of cocktails and beers on a weekend day in his response to the LOI, and that the DOE psychologist concluded that the Individual likely achieved a blood alcohol content of .05 to .08 each weekend. *Id.* The DOE psychologist’s assessment that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(c).

## **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 of this case.

#### **IV. Findings of Fact**

The Individual disclosed on his QNSP that he consumed alcohol "in an unhealthy manner" while serving in the military in 2016 and subsequently participated in a six-week inpatient alcohol treatment program. Ex. 9 at 40. The Individual later disclosed that, prior to undergoing inpatient treatment, he consumed eight to twelve ounces of hard alcohol daily. Ex. 7 at 3. The Individual reported during the treatment program that he felt "overwhelmed with the responsibility of [protecting the lives of others]" in his position in the military, and that he used alcohol in combination with sleeping medication to control racing thoughts and to help him sleep at night. Ex. 9 at 67-68.

The recovery program also consisted of, among other treatment modalities, group counseling, cognitive behavioral therapy, and Alcoholics Anonymous (AA) meetings. Ex. 6 at 1. Medical records of the Individual's treatment at the inpatient facility indicated that the Individual actively participated in treatment and that he satisfactorily completed all components of the program. Ex. 9 at 67. However, the records indicated that the Individual struggled "with being honest with himself" and made only limited progress in addressing desires to drink to control work-related stress. *Id.* at 67-68. At the time of his discharge, the Individual was diagnosed with Alcohol Use Disorder, Severe, with a guarded prognosis based on the Individual's moderate risk of relapse. *Id.* at 68-69.

After undergoing inpatient care, the Individual continued receiving treatment in the form of an intensive outpatient program (IOP) from August 2016 to December 2016 during which he reported

that he abstained from alcohol. *Id.* at 72–74. The Individual reported on his QNSP that he completed the IOP, that he had “been sober up to the present date” and was actively participating in “support groups for alcohol.” *Id.* at 40. However, the Individual began consuming alcohol again in fall 2017. *See* Ex. 3 at 1 (summarizing information collected by the LSO concerning the security concerns). The Individual reported in his response to the LOI that he usually consumed “a couple [of] cocktails then a couple [of] beers when going out with friends on the weekend.” Ex. 6 at 4.

In a psychological assessment, the DOE psychologist noted that the Individual admitted to using alcohol in the past in order to deal with his problems, but that the Individual stated this was no longer his practice. Ex. 7 at 3. The DOE psychologist concluded that the Individual’s Alcohol Use Disorder was in sustained remission, and that the Individual did not meet any of the *DSM-V* criteria for a diagnosis of Alcohol Use Disorder. Ex. 7 at 5.

However, the DOE psychologist concluded that the Individual was “habitually and/or binge consuming alcohol to the point of impaired judgment.” *Id.* The Individual reported to the DOE psychologist that he usually consumed two to three cocktails over three to four hours on weekends when entertaining friends. *Id.* at 4. During their clinical interview, the DOE psychologist inquired as to the Individual’s practices when mixing drinks and, based on the Individual’s reports of not measuring when pouring alcohol, estimated that each of the Individual’s cocktails contained as much as twice the alcohol of a standard mixed drink. *Id.* at 5. Based on his estimate of the volume of alcohol that the Individual was consuming, the DOE psychologist determined that the Individual’s blood alcohol content reached approximately .05 to .08 g/210L weekly. *Id.* In addition, the Individual reported engaging in binge episodes up to five times per year. *Id.* Thus, the DOE psychologist concluded that the Individual habitually consumed alcohol to the point of impaired judgment and binge consumed alcohol to the point of impaired judgment. *Id.*

The DOE psychologist recommended that the Individual receive treatment in the form of weekly outpatient treatment for three months. *Id.* Further, following the three months of treatment, the DOE psychologist recommended that the Individual continue monthly outpatient prevention sessions for the remainder of the year. *Id.* The DOE psychologist also recommended that the Individual abstain from alcohol and attend AA meetings. *Id.* at 5–6.

## **V. Hearing Testimony**

The Individual presented the testimony of a Certified Reciprocal Advanced Alcohol Drug Counselor (expert witness) who received his certification in 1991 and has since become internationally certified. Ex. B at 1. The Individual was assessed by the expert witness in a one-time one-on-one interview after the expert witness had the benefit of examining a report (Individual’s Report) authored by an employee of an outpatient treatment facility for the purposes of this hearing. Tr. at 19-20; Ex. C. The November 18, 2019, Individual’s Report that was compiled by the outpatient treatment facility indicates that the Individual underwent the Michigan Alcohol Screening Test (MAST), the Substance Abuse Subtle Screening Inventory (SASSI-3), the Johns Hopkins Twenty Questions Screening, the AUDIT Questionnaire, and a “Self-Assessment/Personal History” in addition to an interview. Ex. A at 1. The expert witness indicated that the Individual’s Report revealed the Individual did drink to excess in the past, but that he “does not currently appear to have a pattern of life issues related to his alcohol abuse,” and that his

current alcohol consumption is not problematic. Tr. at 21. The expert witness testified that he came to the same conclusions after conducting an interview with the Individual. Tr. at 22. The expert witness also indicated that he read the DOE psychologist's report and noticed that it indicated that the Individual does not currently meet the criteria for alcohol use disorder, but that the DOE psychologist recommended the Individual undergo treatment. *Id.* at 22, 30-31. The expert witness stated that the Individual does not currently experience the same level of stress as when he was in the military, but that he did not know how much alcohol the Individual was consuming as of the date of the hearing. *Id.* at 33, 35-36. During questioning, the expert witness defined a habitual drinker as someone who consumes alcohol on such a basis as to cause difficulties or problems in his or her life, and that he does not think the Individual meets this definition. *Id.* at 41-42, 44.

The Individual testified that he enlisted in the military and joined a specialized group while he was in service. *Id.* at 54. In addition to the duties required of his position, the Individual also had to perform additional duties which he stated made his job even more stressful. *Id.* at 60, 64. Although the Individual did not have access to alcohol while on duty, he did consume alcohol while on leave. *Id.* at 65. The Individual testified that around 2014, he began consuming alcohol heavily. *Id.* at 66, 69. At this time, the Individual was also consuming over-the-counter sleep aids, as he had difficulty falling asleep due to stress. *Id.* at 70. The Individual ultimately decided that his drinking was not a healthy pattern and sought out an alcohol and substance abuse advocate. *Id.* at 71, 73. The Individual participated in inpatient care and agreed to a year of sobriety, participated in AA meetings, and left the military. *Id.* at 74-76. After leaving the military, the Individual felt he could responsibly consume alcohol. *Id.* at 81-82. He acknowledged that while he was in treatment, it was recommended that he abstain from alcohol. *Id.* at 113. He testified that he drank more than usual while at a June or July 2019 wedding, and typically, if he is out with friends over the weekend, he will consume about three drinks. *Id.* at 90. Specifically, the Individual stated that he consumes, on average, three drinks over the span of three hours. *Id.* at 106. The Individual drinks at this rate about twice a month, but during the summer months, the Individual will partake in consuming alcohol about once a week, as his social invitations increase. *Id.* at 93. The Individual testified that at the time he met with the DOE psychologist, he had consumed more alcohol than usual on five or six occasions within the prior year. *Id.* at 96. He stated that he currently copes with stress by getting sleep, exercising, simplifying his life, and "taking a step back" when faced with a stressful situation. *Id.* at 119. Further, the Individual's family serves as a support system. *Id.* at 119-20.

The Individual first saw the DOE psychologist's report when he received the Notification Letter. *Id.* at 108. Upon reading the DOE psychologist's report, the Individual considered stopping his alcohol use, but decided that his alcohol consumption is not a problem and that he knows how to seek help if needed. *Id.* at 110-12. The Individual acknowledged that when he makes mixed drinks at home, he possibly pours more than the standard one-and-a-half ounces of alcohol per drink, but he has no plans to increase his rate of alcohol consumption. *Id.* at 112, 114-15.

The DOE psychologist testified last in order to observe and hear all of the testimony offered. The DOE psychologist stated that the Individual appeared to be forthcoming with information, and that with regard to his prior substance abuse diagnosis, he is in remission. *Id.* at 125-26. The DOE psychologist noted that a formal alcohol diagnosis is not the only criteria that must be considered, and that, although the Individual was drinking excessively to the point of requiring inpatient care in the past, his alcohol consumption at that time was not causing any problems at work, with his

family, or in his personal life. *Id.* at 126. However, based on the information provided during the interview, the DOE psychologist observed that the Individual was consuming enough to reach an estimated BAC of between .05 and .08 on a weekly basis, and stated that .05 is about the point of impairment. *Id.* at 127. The DOE psychologist stated that a BAC of .05 becomes problematic in the context of “a history of substance use that necessitates inpatient care.” *Id.* at 128. Further, the DOE psychologist felt that based on the information provided, the Individual is engaging in habitual and excessive drinking. *Id.* at 129. The DOE psychologist recommended the Individual undergo at least three months of treatment. *Id.* at 154. Additionally, the DOE psychologist did not find sufficient evidence of rehabilitation or reformation at this time. *Id.* at 133.

## **VI. Analysis**

Habitual or binge consumption of alcohol to the point of impaired judgement, regardless of whether the individual is diagnosed with an alcohol use disorder, can render an individual ineligible for access authorization. Adjudicative Guidelines at ¶ 22(c).

Guideline G provides that an individual may mitigate security concerns related to alcohol consumption if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) 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;
- (c) 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; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)–(d). Nonetheless, for the reasons described below, I cannot find that the Individual has mitigated Guideline G security concerns raised by the derogatory information listed in the Summary of Security Concerns.

The testimony and evidence at hand thoroughly established the fact that the Individual’s prior problematic alcohol use occurred while the Individual was serving in the military and assigned to a stressful job. In presenting these facts, the Individual asks me to accept the argument that his problematic past alcohol consumption was solely due to the stress he experienced while in the military. Based on the testimony provided, the Individual is managing his current stress by getting enough sleep, exercising, simplifying his life, and he is no longer in the military. Tr. at 119. Even with those coping mechanisms in place and despite leaving the military and its unique set of stressors, the Individual is still consuming enough alcohol to achieve some level of impairment at least twice a month. Therefore, I find the argument that this problematic alcohol use is unlikely to

recur unconvincing. Accordingly, I cannot find that the Individual has satisfied the first mitigating condition. Adjudicative Guidelines at ¶ 23(a).

Although the Individual recognized his pattern of maladaptive alcohol use in the past and actively sought treatment, he has not acknowledged that his current alcohol use is a problem or sought further treatment. During his testimony, the Individual did not identify any personal, professional, or legal problems as a result of his current alcohol consumption. However, the Individual's past problematic alcohol use did not cause any reported problems in his personal or professional life, but he still sought treatment. Accordingly, the assessment of whether the Individual's current alcohol use is problematic does not rest on whether the Individual is experiencing problems in these aspects of his life. The fact remains that after a laudable year-long stretch of abstinence, the Individual is now consuming, on average, one drink every hour in a three-hour span at least every other weekend. The estimated BAC levels suggest the Individual is achieving some level of impairment or intoxication at least twice a month, and these occurrences may increase as his number of social engagements increase during the warmer months of the year. Based on this information, the DOE psychologist determined the Individual habitually and/or binge consumes alcohol. Despite being presented with this assessment and a very modest treatment recommendation, the Individual did not recognize his current alcohol consumption as problematic or maladaptive, and accordingly, did not opt to seek treatment.

I also cannot find that the Individual has established a pattern of modified consumption or abstinence. As the Individual indicated in his LOI, his past treatment provider required one year of sobriety and recommended a lifetime of sobriety. Ex. 6 at 2. Despite a diagnosis of Alcohol Use Disorder, the Individual did not continue with his sobriety. This recommendation of continued sobriety aside, the evidence that the Individual has established a pattern of modified consumption is not strong. The Individual provided responses in his LOI indicating that he consumes less alcohol than he did prior to his treatment. *Id.* at 5. However, the testimony and the responses in the LOI also indicate that the Individual's alcohol intake increases during the times his social invitations become more frequent and that he also consumes more alcohol than usual during holidays or other such occasions. These facts, on their face, do not establish a pattern of modified consumption. Therefore, the second mitigating condition under Guideline G is inapplicable to this case. Adjudicative Guidelines at ¶ 23(b).

The remaining mitigating conditions are not applicable, as the Individual is not currently participating in counseling or a treatment program. *Id.* at ¶ 23(c)–(d). I therefore conclude that the Individual has not sufficiently mitigated the Guideline G security concerns raised by his current alcohol use.

## **VII. Conclusion**

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 not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. 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