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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: May 14, 2020) Case No.: PSH-20-0062
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Issued: October 14, 2020

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXX (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 restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. In August 2019, the Individual was arrested and charged with Driving Under the Influence (DUI) and timely reported the incident to DOE. He was evaluated by a DOE-consultant Psychologist (the Psychologist) and diagnosed with Alcohol Use Disorder Moderate. His security clearance was suspended. 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 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 May 14, 2020. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-20-0062 (hereinafter cited as “Tr.”). The LSO submitted 16 exhibits, marked as Exhibits 1

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.

through 16 (hereinafter cited as “Ex.”). The Individual submitted two exhibits, marked as Exhibits A and B.

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 Guidelines G, I, and J 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.

Guideline G (Alcohol Consumption) provides that “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 DUI and had a blood alcohol concentration (BAC) of 0.152; that he was diagnosed with Alcohol Use Disorder Moderate; that he continued drinking after being advised to stop and being placed on a medication to reduce alcohol cravings; and that he consumed about 24 beers per week for several months around the time of the DUI. Accordingly, the LSO's security concerns under Guideline G are justified.

Guideline I (Psychological Conditions) provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 28. The conditions that could raise a security concern and may be disqualifying include behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline, that may indicate an emotional, mental, or personality condition; an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; voluntary or involuntary inpatient hospitalization; failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness; and pathological gambling. Adjudicative Guidelines at ¶ 28. The LSO alleges that the Individual was diagnosed with Alcohol Use Disorder Moderate by a licensed psychologist after choosing to drive under the influence of several alcoholic drinks and that the Individual continued consuming alcohol after being advised to abstain by multiple medical professionals over a period of several years. Accordingly, the LSO's security concerns under Guideline I are justified.

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The conditions that could raise a security concern and may be disqualifying include a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; evidence of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; an individual is currently on parole or probation; an individual's parole or probation was violated or revoked; an individual's failure to complete a court-mandated rehabilitation program; and discharge or dismissal from the Armed Forces for reasons less than “Honorable.” Adjudicative Guidelines at ¶ 31. The LSO alleges that the Individual was arrested and charged with DUI and had a history of substance-related interactions with law enforcement. Accordingly, the LSO's security concerns under Guideline J 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 entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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, the Individual testified that he continues to consume about four drinks per week. Tr. at 22. He has been seeing a cognitive behavioral therapist every one to two weeks for several months. *Id.* at 34, 63–64. The Individual has been learning to change his behavior in situations that cause high anxiety. He intends to continue to see the therapist. *Id.* at 35. The Individual had been

taking the medication Acamprosate to reduce alcohol cravings for several years at the time of his DUI, but had since switched to Naltrexone for a similar purpose. *Id.* at 24–25. He testified that he was taking Naltrexone so that he did not form an unhealthy relationship with alcohol again and so that he did not get any of the benefits of alcohol when he chose to drink. *Id.* at 31, 51. The Psychologist stated that this was not the case and that the effects of Naltrexone can be overcome by consuming enough alcohol. *Id.* at 55. The Individual testified that his doctor did not tell him he could still consume alcohol while taking the Naltrexone. *Id.* at 58–59. He also testified that his doctor asked him to stop drinking completely, which he did, but that he subsequently resumed consuming alcohol because he decided that he could control his alcohol consumption at that time. *Id.* at 64–65.

The individual's criminal case for his DUI is still pending. Tr. at 36. He is waiting to hear what plea bargains are available. *Id.* At the time of the hearing, the court had not required any substance abuse treatment, but he voluntarily underwent some treatment suggested during an alcohol assessment he sought privately. *Id.* He completed an eight hour drug and alcohol class and a victim impact panel. *Id.* at 38. The Individual abstained from alcohol during January and February 2020. *Id.* at 42.

The Individual viewed his alcohol use as separate from his mental health issues. Tr. at 40. He testified that he was attempting to decouple alcohol from his attempts to relieve his anxiety, and that his unhealthy alcohol use was an attempt to self-medicate to reduce anxiety, rather than a problem with alcohol itself. *Id.* He also testified that he was taking, and had taken in the past, medications that prevented “feeling good” after drinking alcohol so that he would not use alcohol to self-medicate, though he consistently consumed alcohol for several years while taking these medications. *Id.* at 24–25, 45. The Individual testified, regarding his intent to consume alcohol in the future, that he wanted to be the kind of person who could consume alcohol responsibly and in moderation and that he did not want to use alcohol as a crutch anymore. *Id.* at 104–05.

The Psychologist testified that he diagnosed the Individual with Alcohol Use Disorder Moderate in December. Tr. at 75. He testified that he found that the Individual had not presented evidence of rehabilitation at that time, in large part because the Individual had not begun the assessment and recovery process in the months between his DUI and his evaluation. *Id.* The Psychologist testified that both Acamprosate and Naltrexone are indicated to support abstinence, not moderate drinking. *Id.* at 77.

The Psychologist testified that he did not believe that the Individual was rehabilitated. Tr. at 81, 88. He believed that the Individual's extensive history of therapy should have placed him further along in his recovery, and that the Individual's denial and minimization at the hearing indicated that he was not rehabilitated. *Id.* at 81–82. He testified that he did not believe there was any amount of alcohol that the Individual could safely consume. *Id.* at 87–88. The Individual took issue with this statement, stating that he disagreed and that he felt much better with his current level of alcohol consumption. *Id.* at 103.

The Psychologist gave several reasons why he did not believe the Individual was rehabilitated. He testified that the Individual stated on his initial clearance application that he consumed one to two drinks three to four times per week, that his next evaluation stated two to four drinks four times per week, and that he was drinking at least 24 drinks per week by the time of his DUI. Tr. at 88–89.

The Psychologist testified that the Individual chose to drive after several drinks on the day of his DUI and had sustained multiple negative interactions with law enforcement related to substance abuse since becoming an adult. *Id.* at 89–90. He further testified that the Individual had a lengthy history of mental health treatment that included medications to assist in abstinence, but continued to drink nonetheless. *Id.* at 90. Finally, he testified that the Individual had not presented evidence of long term or short term changes that indicated that he had improved his relationship with alcohol. *Id.* at 90–92.

The Psychologist testified that anxiety was still causing difficulty for the Individual, despite the Individual’s efforts over the years to treat it. *Id.* at 92–93.

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 places 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 granting or restoring security clearances, I must deny access authorization 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.

Guideline I provides that security concerns arising from psychological conditions can be mitigated when (1) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; (2) the individual has voluntarily entered and is currently receiving counseling or treatment program, if the condition is amenable to treatment, and the individual currently has a favorable prognosis by a duly qualified mental health professional; (3) a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government has recently opined that an individual's

previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; (4) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and (5) there is no indication of a current problem. Adjudicative Guidelines at ¶29.

Guideline J provides that security concerns arising from criminal conduct can be mitigated when (1) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (2) the individual was pressured or coerced into committing the act and those pressures are not prescribed, the pressures are no longer a part of the individual's life, and the abuse has since ended; (3) there is no reliable evidence to support that the individual committed the offense; and (4) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement. Adjudicative Guidelines at ¶ 32.

The Individual has not completed a treatment program and though he is in counseling, he has a history of relapse. His alcohol use is recent and weekly and he intends to continue consuming alcohol despite recommendations from multiple medical professionals that he abstain. The Individual did not accept that he had problems with alcohol, stating that his issues centered on anxiety and that alcohol was just a "crutch" he had used to cope. Tr. at 62. Furthermore, he did not present any evidence to support his testimony that he had overcome his problem. He did not present medical evidence proving abstinence or records of attendance at support groups. He testified that his therapy was centered on anxiety, rather than alcohol use issues. Indeed, the Individual's intent to continue consuming alcohol, against the advice of medical professionals and while taking a medication designed to support abstinence, is evidence that the Individual has not overcome his alcohol problem. For these reasons, I cannot find that the Individual has mitigated the Guideline G concerns.

The Individual has not presented a treatment plan for his alcohol use disorder but has demonstrated noncompliance with medical advice to abstain. Though he is attending counseling, this treatment is centered on his anxiety and does not address his alcohol use in a focused, specific way. Furthermore, the Psychologist, a duly qualified mental health professional who is also contracted by the U.S. Government, opined at the hearing that the Individual was not rehabilitated. He gave the Individual a guarded prognosis due to the Individual's continued use of alcohol. Additionally, the Individual's alcohol use disorder was not temporary and is a current problem. For these reasons, I cannot find that the Individual has mitigated the Guideline I concerns.

The Individual's DUI happened just over a year before the hearing, but his history of substance-related interactions with law enforcement goes back decades. Accordingly, his DUI continues to cast doubt on his judgment, trustworthiness, and reliability, and I cannot find that he is unlikely to have a substance-related interaction with law enforcement in the future. The Individual was not coerced into driving under the influence of alcohol and he continues to drink alcohol despite being advised by multiple doctors to stop. The Individual does not contest that he was the driver during the incident, nor does he contest that he drove with a BAC over the legal limit. Finally, the Individual's criminal conduct is inextricably linked to his alcohol use and, until he is rehabilitated

from his alcohol issues, I cannot find that he is rehabilitated from his criminal conduct issues. Moreover, his criminal case is still pending, casting further doubt on his rehabilitation. For these reasons, I cannot find that the Individual has mitigated the Guideline J 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 Guidelines G, I, and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring 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 restore 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