

*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: December 17, 2021) Case No.: PSH-22-0032
)
)
_____)

Issued: May 12, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 and Special Nuclear Material.”¹ 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 be granted.

I. Background

The Individual has a history of four alcohol-related arrests. On August 9, 2015, police arrested and charged the Individual with Driving Under the Influence (DUI), Contributing to the Delinquency of a Minor, and Criminal Negligence. Ex. 11 at 30. On July 29, 2016, police arrested and charged the Individual with Driving While Intoxicated (DWI). Ex. 8 at 1; Ex. 11 at 32. On March 10, 2018, police arrested and charged the Individual with Criminal Negligence and Misusing Property when, after a bartender refused to continue serving him alcohol, he destroyed property. Ex. 8 at 11, 16. On June 26, 2021, police arrested and charged the Individual with Public Intoxication and Aiding and Abetting. Ex. 7 at 2.

Because of the security concerns raised by the Individual’s three alcohol-related arrests, the Local security office (LSO) requested that he undergo an evaluation by a DOE-contractor Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on April 16, 2021.² Ex. 9 at 2. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s

¹ Under the regulations, “[a]ccess 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.

² The Individual’s fourth alcohol-related arrest occurred after the CI and the Psychologist’s report.

medical records and security file, administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI-3) to the Individual, and had him undergo Phosphatidylethanol (PEth) and Ethyl Glucuronide (EtG) laboratory tests that detect alcohol consumption. Ex. 9 at 3. The Individual's EtG test was negative, indicating that the Individual had not consumed alcohol during the previous three or four days. Ex. 9 at 5. The Individual's PEth test was positive, indicating that the Individual had engaged in moderate to heavy alcohol consumption during the previous three to four weeks. Ex. 9 at 5, 27.

The Psychologist issued a report of his findings (the Report) on April 22, 2021. Ex. 9 at 8. In the Report, the Psychologist found that the Individual had met the criteria for Alcohol Abuse Disorder, Moderate (AUD) set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) and that the Individual was neither reformed nor rehabilitated. Ex. 9 at 8. The Psychologist recommended that the Individual completely abstain from alcohol use for twelve months, attend an Intensive Outpatient Program (IOP), attend Alcoholics Anonymous (AA) or a similar support group, and obtain a sponsor. Ex. 9 at 7. The Psychologist also recommended that the Individual continue to receive monthly laboratory tests to detect alcohol use. Ex. 9 at 7.

After receiving the Report, 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 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his Counselor (the Counselor), and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0032 (hereinafter cited as "Tr."). The Individual submitted three exhibits marked as Exhibits A through C (hereinafter cited as "Ex."). The DOE Counsel submitted 12 exhibits marked as Exhibits 1 through 12.

Exhibit A is 29 pages of Alcohol Testing Forms indicating that the Individual has tested negative for alcohol use on numerous occasions. Exhibit B is a letter, dated March 30, 2022, from the Individual's probation officer indicating that the Individual has had a "positive attitude towards satisfying obligations to the court" and is going "above and beyond the requirements set on him by the court." Ex. B at 1. He further stated that the Individual had fully complied with his drug testing and that the results of that testing had been uniformly negative. Ex. B at 1. Finally, the Probation Officer states: "In the time that I have known him he has taken responsibility seriously and has grown from this experience into a well-rounded and trusted individual." Ex. B at 1. Exhibit C is a letter from a substance abuse counselor (SAC) documenting that she had provided substance abuse counseling to the Individual from June 28, 2021, to September 13, 2021.

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 substantial doubt concerning his eligibility for a security clearance,

citing his history of four alcohol-related arrests and the Psychologist's finding that the Individual met the DSM-5 criteria for AUD. This information adequately justifies the LSO's invocation of Guideline G of the Administrative Guidelines. Under Guideline G (Alcohol Consumption), "[e]xcessive 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as driving while under the influence ... disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder." and "diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder." Adjudicative Guidelines at ¶ 22(a) and (d).

Guideline J (Criminal Conduct) provides that "[c]riminal activity creates doubt about a person's judgement, 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 Guideline J at ¶ 30. The LSO cites the Individual's four alcohol-related arrests in support of its invocation of Guideline J. This information adequately justifies the LSO's invocation of Guideline J.

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) (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 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.

IV. Hearing

The Counselor, a professional clinical counselor and licensed marriage and family counselor, testified at the Hearing that she first met the Individual on July 29, 2021, when he attended an

“Alcohol Education and Awareness” group (the AEA group) that she was facilitating. Tr. at 14. The Individual completed the six-week AEA group program, and then began attending a “Maintaining Changes” (MC) group which was also facilitated by the Counselor. Tr. at 14. The AEA group was a support group and was educational and informational in nature, which involved some counseling. Tr. at 15. The MC group conducts a twelve-week program, which the Individual completed. Tr. at 15. The Individual continues to regularly attend the MC group as an alumnus. Tr. at 15. The MC group conducts a treatment, education, and support program. Tr. at 15-16. The members of the MC group interact outside of class and provide each other with support. Tr. at 16. Abstinence from alcohol use is a requirement for membership in the MC group. Tr. at 17-18. Recently, an AA member talked at an MC group meeting, and while the Individual is interested in AA, he has not attended any AA meetings. Tr. at 19.

The counselor has met Individually with the Individual on three occasions. Tr. at 19-20. The Counselor testified that the Individual “really took the groups and the workbooks and the skills, and he was able to express and articulate what he learned, and I mean specifically what he learned.” Tr. at 20. The Counselor testified at length about the skills that the Individual had acquired through her classes, the progress he has made, the insight he has developed, and his understanding of the outside factors that affected his alcohol use. Tr. at 21. The Individual has moved from the “conceptualization/contemplation stage” to the “action and maintenance” stage of his recovery. Tr. at 21. The Individual is motivated to avoid alcohol use, in part, because of his concerns about what his fellow MC group members would think if he did. Tr. at 22. The Counselor testified that the Individual was also motivated to change because alcohol had resulted in his incarceration and he was concerned about the effects of that incarceration (and any future incarceration) would have on his young son. Tr. at 22.

The Counselor testified that she was impressed by the Individual’s desire for and commitment to sobriety. Tr. at 22. The Individual can say he is “an alcoholic” in public. Tr. at 22-23. She further testified that the Individual is “committed to lifelong abstinence. Tr. at 23. The Individual has made the difficult decision to avoid being around his family and friends when they drink. Tr. at 23. His live-in girlfriend no longer uses alcohol. Tr. at 23. The Individual has reconnected with his local community and culture. Tr. at 24. The Counselor opined that the Individual no longer needs to attend an IOP since he has acquired the skills, tools, and knowledge to maintain his sobriety through other means. Tr. at 26-27. According to the Counselor, the Individual is now a much happier person and is now free of the sadness and shame that his alcoholism had brought him. Tr. at 27-28. She testified that she is confident that the Individual will be able to maintain his sobriety in the future. Tr. at 29-30.

The Individual testified that he is “an alcoholic” and that he is “done with alcohol.” Tr. at 34, 53. He noted that his family and local community have developed a “drinking culture.” Tr. at 34. He further testified to the profoundly negative effect that alcoholism had upon members of his family, including himself. Tr. at 35-37. The Individual described his nine and a half months of sobriety as “a life changing journey.” Tr. 37. He further testified:

I have created a sober lifestyle for myself that has proven triumphant. I am no longer afraid to make mistakes. I am no longer afraid of my emotions. I'm no longer afraid to admit that I am an alcoholic, and I do in fact suffer from alcoholism. I am no longer afraid to admit that I am powerless over alcohol.

Tr. at 37. The Individual testified that, after his most recent arrest, he found himself lying to his young son to hide the fact that he was spending the weekend in jail because of the decisions he had made while using alcohol. Tr. at 38. He further testified:

It was in that moment that I finally realized, after numerous arrests and mistakes, and dishonesty and distrust on my part, the path I was taking was not a righteous one. On June 28th, when I was released, I knew what needed to be done. I knew I was done for good. No more temporary sobrieties, no more lies, no more jumping through the hoops. I knew I needed to find my connection to sobriety, or seek the connection to sobriety that worked for me. I knew that I could find the strength and motivation I needed to become successful through the love I have for my son. It was time for me to accept the fact that I am an alcoholic.

Tr. at 38. The Individual testified that when he returned from jail, he removed all the alcohol from his home. Tr. at 38. Shortly after that, he began attending the AEA group and then the MC group. Tr. at 39. He now considers the MC group to be his extended family. Tr. at 39.

The Individual also testified as to the strategies he uses to maintain his sobriety. Tr. at 40. He now has tools that allow him to face the internal and emotional triggers that he used to address with alcohol. These tools include going for walks sitting outside, working on crafts, camping, backpacking, and spending time with his son. Tr. at 41-43. He also utilizes coping strategies including self-talk techniques and mindfulness. Tr. at 43, 53. He has become more involved in his cultural activities and has accepted an important leadership role in his community. Tr. At 43. The Individual testified that his girlfriend “has chosen to remain sober with me.” Tr. at 44. The Individual cited the SAC as someone he can still talk to about his alcohol issues. Tr. at 47. He intends to remain sober for his lifetime and realizes that he cannot use alcohol in moderation. Tr. at 54, 56. He testified “I love who I am today.” Tr. at 56.

The Psychologist observed the testimony of the Individual’s witnesses before testifying at the hearing. The Psychologist testified that he found the Individual to be very honest with him. Tr. at 61, 68. When he conducted the CI, the Individual was consuming a significant amount of alcohol. Tr. at 61. The Psychologist diagnosed the Individual with AUD, Moderate. Tr. at 62. The Psychologist testified that he knew the Counselor and could tell that “she really admires what [the Individual] did and his participation,” and noted that the Individual had “gone way beyond what he needed to do there by joining the alumni group, and going every time, and making connections within it.” Tr. at 64. The Counselor testified that he found the Individual’s testimony to be impressive, noting that “It wasn’t the common, ordinary set of clichés that we often do hear. It was thoughtful and complex in ways that I thought indicated he probably will be able to maintain his abstinence.” Tr. at 65. The Psychologist characterized the Individual’s prognosis as “good.” Tr. at 66. The Psychologist agreed that, while the Individual did not comply with his exact treatment recommendations, the Individual was able to achieve better results by attending the AEA and MC groups than would have been expected if he had attended an IOP and AA. Tr. at 68.

V. Analysis

Guideline G

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if: “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 Adjudicative Guidelines at ¶ 23(b). This mitigating condition is present in the instant case.

The Individual has provided credible testimony, partially corroborated by laboratory results, that he has abstained from alcohol use for nine and a half months. In addition, the Individual has submitted evidence showing that he completed the AEA group program and MC group program (where he continues to attend as an alumnus), and has received individual counseling for substance abuse.

The Individual, who refers to himself as “an alcoholic,” clearly acknowledges his AUD. He has provided compelling evidence that he has taken action to overcome his alcohol problem, including abstaining from alcohol use for nine and a half months, attending and completing the AEA and MC group programs, attending individual counseling, and compellingly articulating an understanding and acceptance of his alcoholism. Though these efforts at rehabilitation, the Individual has demonstrated that he has developed a strong and effective toolset allowing him to address any future challenges that his alcohol use disorder may present to him. I also note the favorable prognosis regarding the Individual’s AUD attested to by the Psychologist and the Counselor. Accordingly, I find that the Individual has provided more than adequate evidence of rehabilitation and reformation to mitigate and resolve the security concerns raised under Guideline G by his AUD and his history of four alcohol-related arrests.

Guideline J

An individual may mitigate security concerns under Guideline J if: “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(d).

The Individual’s criminal activity concerns are inextricably linked to his AUD. Each of these arrests occurred after an incident in which the Individual was intoxicated. They were each clearly symptomatic of his AUD. Since the Individual has convincingly shown that he is rehabilitated or reformed from his AUD, I find that the root cause of his criminal activity has been successfully addressed. Due to the Individual’s sobriety, and the changes that he has made to achieve that sobriety, the circumstances surrounding his criminal conduct have been removed. *See* 10 C.F.R. § 710.7(c). Moreover, as evidenced by Exhibit B, a letter from his parole officer, the Individual has gone above and beyond the requirements he needed to meet to fulfill his compliance with the terms of his parole and probation; he has been employed by a DOE contractor; and he has become a leader in his local cultural community. Notwithstanding the frequency and recency of the criminal activity, I am still persuaded that the absence of alcohol in the Individual’s life make it unlikely to recur.

I therefore find that the security concerns raised by his four arrests under Guideline J have been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guidelines G and J. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals