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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing

Filing Date: April 4, 2024

Case No.: PSH-24-0095

Issued: December 19, 2024

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 or Eligibility to Hold a Sensitive Position.”¹ The present case involves an Individual who has a history of four alcohol-related arrests. This Decision considers whether the Individual has resolved the security concerns raised by her four alcohol-related arrests. 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 not be restored.

I. Background

In August 2006, police arrested and charged the Individual with Driving While Intoxicated (DWI) after administering two breath alcohol tests which estimated her blood alcohol content (BAC) at 0.17% and 0.18% respectively. Exhibit (Ex.) 19 at 120–24.

In November 2011, police cited and charged the Individual with Open Container. Ex. 18 at 115. According to the Individual, she was a passenger in a vehicle where an open container of alcohol was found during a routine traffic stop and was cited and fined. Ex. 18 at 116; Ex. 21 at 141.

In February 2014, police arrested and charged the Individual with Driving Under the Influence of Liquor (DUI) and Failure to Maintain Traffic Lane. Ex. 17 at 101. Police administered two breath alcohol tests to the Individual which both showed her BAC to be 0.15%. Ex. 17 at 102.

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.

On September 7, 2023, police arrested and charged the Individual with Aggravated DWI. Ex. 11 at 51. The Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual as a result of this arrest. On September 26, 2023, the Individual responded to this LOI. Ex. 20 at 126–32. In this response, the Individual stated that from approximately 4:30 PM to 8:15 PM on the evening of this arrest, she had consumed two full sized alcoholic drinks and one half sized alcoholic drink over the course of approximately three and a half hours.² Ex. 20 at 126. This information contradicts the Individual’s statement to law enforcement at the time of her arrest when she stated she had had one and a half drinks between 4:00 PM and 5:30 PM. Ex. 11 at 50.

At the request of the LSO, the Individual was evaluated by a DOE contract psychologist (the DOE Psychologist). On November 17, 2023, the DOE Psychologist conducted a clinical interview of the Individual (CI). Ex. 22 at 147. On November 29, 2023, the DOE Psychologist issued a report in which she noted that the Individual had been evaluated by a different DOE contract psychologist in 2014 who concluded that the Individual neither used alcohol habitually to excess nor met the criteria for an alcohol disorder. Ex. 22 at 149. However, that DOE contract psychologist noted that the Individual had a tendency to minimize the amount she drank when asked her consumption by DOE personnel and medical professionals. Ex. 22 at 149. During the most recent evaluation, the Individual told the DOE Psychologist that she abstained from consuming alcohol for one and a half to two years after the 2014 DUI charge, but then gradually began to drink again. Ex. 22 at 149. The Individual reported to the DOE Psychologist that the last time she had consumed alcohol was on September 17, 2023, about a week after her 2023 DWI arrest. Ex. 22 at 149. As a part of her evaluation, the Individual was administered a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption, which was negative, corroborating her abstinence from alcohol consumption.³ Ex. 22 at 152.

As a result of the evaluation, the DOE Psychologist wrote a report in which she opined that the Individual did not meet sufficient criteria for a diagnosis of Alcohol Use Disorder. Ex. 22 at 152. However, she opined that the Individual had “demonstrated a history of impaired judgment when under the influence of alcohol” and had “demonstrated a pattern of problematic drinking behavior.” Ex. 22 at 152–53. The DOE Psychologist concluded that the Individual had not demonstrated that she was rehabilitated or reformed but noted that she had taken court-ordered alcohol education courses in the past and, at the time of the evaluation, the Individual had attended approximately twenty-eight online Alcoholics Anonymous (AA) meetings. Ex. 22 at 152. The DOE Psychologist recommended that, in order to show reformation or rehabilitation, the Individual should: (1) complete at least one year of documented abstinence from alcohol consumption; (2) attend AA or an intensive outpatient program (IOP); (3) if the alcohol consumption is a response to a “known stressor,” pursue counseling with a “licensed substance abuse trained therapist”; and (4) if the Individual remains at work, be involved with her company’s employee assistance program (EAP). Ex. 22 at 152–53.

² A police report indicates that the Individual was pulled over at approximately 7:51 PM. Ex. 11 at 50.

³ PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption. However, alternative explanations should be explored following any positive finding. Ex. 23 at 167.

A. Present Administrative Review Proceeding

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that it received derogatory information creating substantial doubt regarding her eligibility to hold a security clearance. The Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge to resolve the security concerns. *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, her Occupational Medicine Psychologist (OM Psychologist), her therapist (Therapist), her former supervisor, her brother, her coworker, and the DOE Psychologist. The DOE Counsel submitted twenty-eight exhibits, marked as Exhibits 1 through 28. The Individual submitted eight exhibits, marked as Exhibits A through H.

Exhibit A consists of fourteen negative PEth tests from the following dates: October 17, 2023; November 14, 2023; December 20, 2023; January 23, 2024; February 14, 2024; March 18, 2024; April 17, 2024; May 13, 2024; June 3, 2024; July 1, 2024; August 3, 2024; September 3, 2024; October 1, 2024; and October 24, 2024. Ex. A at 3–49.

Exhibit B consists of copies of the Individual's annual work performance evaluations from January 2020 to the present. Ex. B.

Exhibit C is a reference letter from a coworker dated May 21, 2024. Ex. C.

Exhibit D is a list of the Individual's prescriptions as of October 2024. Ex. D.

Exhibit E is a log of all of the AA and SMART Recovery (SMART) meetings that the Individual has attended. Ex. E. It indicates that the Individual began attending AA meetings on January 5, 2024, and SMART meetings on April 7, 2024. Ex. E at 1–2.

Exhibit F is a copy of the OM Psychologist's resume. Ex. F.

Exhibit G is a copy of the Therapist's resume. Ex. G.

Exhibit H is a copy of the Nolle Prosequi resolving the charges from the Individual's September 2023 arrest. Ex. H.

II. The Summary of Security Concerns (SSC)

The SSC attached to the Notification Letter informed the Individual that information in the possession of the DOE creates substantial doubt concerning her eligibility for a security clearance under Guideline G (Alcohol Consumption). Under Guideline G, the LSO cited the DOE Psychologist's conclusion that the Individual demonstrated a history of impaired judgement when under the influence of alcohol, her four alcohol-related arrests, and her problematic alcohol use. Ex. 1 at 6. This information adequately justifies the LSO's invocation of Guideline G. Under

Guideline G, “[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 . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder” and “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.” Adjudicative Guidelines at ¶ 22(a), (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) (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 their 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 Testimony

The Individual testified that she has not consumed any alcohol since September 17, 2023. Transcript of Hearing, OHA Case No. PSH-24-0095 (Tr.) at 88. The next day, she had a meeting as part of her employer’s Fitness for Duty (FFD) program, where she was evaluated by the OM Psychologist, who informed her that as a requirement for the FFD program the Individual should abstain from alcohol use. Tr. at 89–90. She testified that she decided to stop consuming alcohol both because of the requirement for FFD and because she realized her job and security clearance were more important to her than alcohol. Tr. at 89–90. The Individual explained that for now her intention is to continue her sobriety but she would not commit to indefinite abstinence from alcohol consumption. Tr. at 90–91, 104, 119, 123–24. She also admitted that she stated she would no longer consume alcohol before driving during a personnel security interview (PSI) she underwent in 2006. Tr. at 124; Ex. 27 at 389. She further admitted that during a PSI in 2014, she stated that she did not plan to consume alcohol anymore. Tr. at 126. The Individual testified that her present

period of abstinence from alcohol was different from her prior abstinence from alcohol because she has undergone treatment. Tr. at 126. When asked why she resumed consuming alcohol after her 2014 DWI, the Individual said at that time she believed that she could consume alcohol in moderation. Tr. at 128. She believes she has “learned a lot more” about alcohol than she did after her 2014 DWI. Tr. at 129.

The Individual testified that she was deeply affected by the death of her mother in May 2022. Tr. at 94. The Individual and her brother were her mother’s sole caretakers prior to her death and that responsibility was very hard on her. Tr. at 94–95. She now believes that she was using alcohol consumption as a coping mechanism for her grief. Tr. at 95. The Individual believes that her biweekly sessions with the Therapist have helped her to learn healthier ways to deal with her grief. Tr. at 97. The Individual testified that she has also been seeing the OM Psychologist for counseling every other week. Tr. at 98. She said that the OM Psychologist provides her treatment related to alcohol use including discussing what the Individual has learned in AA and SMART meetings. Tr. at 139.

The Individual testified that she attends several online AA groups’ meetings because of her schedule, though she does have one meeting that she prefers when it works for her schedule. Tr. at 105, 107. The Individual has also been attending SMART meetings online. Tr. at 109. She testified that she does not have an AA sponsor because she does not believe she has the time in her schedule to “maintain a good relationship with a sponsor.” Tr. at 108. The Individual stated that while she has been attending AA meetings, she is not allowed to speak at the meetings because she does not identify as an alcoholic. Tr. at 122. However, the Individual was able to give detailed descriptions of the concepts and coping skills she has learned from her AA and SMART meetings. Tr. at 99–103. She testified that she does not have any friends from AA or SMART that she meets with outside of the meetings, but she feels she has a community in both programs that she could reach out to if she wanted to. Tr. at 141. When asked about her support system, the Individual said that her support system consists of her medical professionals and her brother. Tr. at 141. She elaborated, saying that one of the reasons that she enjoyed SMART was because it focused on self-management rather than relying on others. Tr. at 141.

She claimed that she does not identify as an alcoholic “out of respect” for the three medical professionals who did not diagnose her with an alcohol use disorder. Tr. at 122. When asked if she felt she had a problem with alcohol, the Individual responded that “[a]lcohol has created a problem for me.” Tr. at 123.

The OM Psychologist testified that she previously met the Individual as a part of her work in the Human Reliability Program (HRP). Tr. at 13. The Individual, in her role as a manager, also regularly interacted with the OM Psychologist when the Individual was concerned about the mental health of her employees in the HRP. Tr. at 13–14. The OM Psychologist evaluated the Individual in June 2023 as part of the Individual’s annual HRP evaluation. Tr. at 15. The OM Psychologist next saw the Individual when she conducted an FFD evaluation shortly after the Individual’s September 2023 DWI. Tr. at 16. As a result of the FFD evaluation, the OM Psychologist recommended that the Individual: begin individual counseling covering her relationship with alcohol and her stress and anxiety; engage in a program such as AA or SMART; abstain from consuming alcohol; and undergo PEth testing to monitor her compliance with the

program. Tr. at 17. In February 2024, the Individual began seeing the OM Psychologist for individual counseling every other week. Tr. at 19. The sessions focused on applying the lessons the Individual learned in AA and SMART to her day-to-day life. Tr. at 21. The OM Psychologist said that she was treating the Individual for Alcohol Dependence, Moderate, and at the time of the hearing, the Individual was in sustained remission. Tr. at 31. She stated that she believed that the Individual has a good prognosis because she has abstained from alcohol for approximately fourteen months and has undergone alcohol treatment for the first time. Tr. at 32. The OM Psychologist testified that she did not believe that the Individual needed an AA sponsor because the Individual has “people in her life that she can do that with who truly understand everything that she’s trying to balance in her life.” Tr. at 22.

The Therapist testified that she began seeing the Individual for therapy in November 2023. Tr. at 54. Initially, their sessions were weekly, and now the Individual sees the Therapist every other week. Tr. at 54. The Therapist provides the Individual with grief counseling. Tr. at 55. The Therapist opined that the Individual’s prognosis related to coping with her grief was excellent. Tr. at 58–59. The Therapist does not specialize in treating individuals with substance abuse problems, and she has not provided the Individual with any treatment related to her alcohol use. Tr. at 60, 62. She further clarified that the Individual’s treatment focuses on coping skills for grief, which included finding healthier coping skills than consuming alcohol. Tr. at 62. Based on her assessment of the Individual, the Therapist does not believe that the Individual has a dependence on alcohol, but she opined that the Individual had needed to develop adequate tools to address triggers and stressors. Tr. at 63.

The Individual’s former supervisor testified that he directly supervised her for about four years from 2018 to 2022. Tr. at 42. He testified that he had in the past attended some after work social events with the Individual where alcohol was present. Tr. at 43. He did not recall ever seeing the Individual consume so much alcohol that she behaved inappropriately, but also admitted that he had consumed alcohol with her on fewer than ten occasions and did not have significant knowledge about her use of alcohol. Tr. at 43, 49. Finally, the former supervisor stated that he found the Individual to be trustworthy and reliable in the workplace. Tr. at 45–46.

The Individual’s brother testified that he lives next door to the Individual and has contact with her on a daily basis. Tr. at 67. He has not seen the Individual consume alcohol in more than a year and a half or two years and stated that the Individual has always been reluctant to consume alcohol around him because he does not consume alcohol. Tr. at 71–72. The brother testified that while he has seen her consume a glass of wine at a restaurant, he has never seen her under the influence of alcohol. Tr. at 72. He said that he did not see any alcohol in the Individual’s house the last time he was there, but he does not recall her ever purchasing alcohol to consume at her home. Tr. at 73.

The Individual’s coworker testified that she has worked with the Individual for about seven years and only sees her at work-related functions. Tr. at 77. She opined that the Individual is very reliable and trustworthy at work. Tr. at 79.

The DOE Psychologist testified after observing the testimony of each of the other witnesses at the hearing. She opined that the Individual had met the standard for reformation based on her

documented abstinence from alcohol consumption. Tr. at 148. She further opined that the Individual had met the standard for rehabilitation by attending therapy, AA, and SMART. Tr. at 148–49. She explained that she had some minor reservations, because the Individual had previously returned to problematic alcohol consumption after a fourteen-month period of sobriety. Tr. at 149–150. However, those reservations have been offset by the treatment the Individual has undergone. Tr. at 149–50. Prior to the treatment, she would have given the Individual a poor prognosis related to her abstinence from alcohol, but now she would give the Individual a fair prognosis with some reservations due to her history of relapsing after an extended period of sobriety. Tr. at 150. The DOE Psychologist further explained that her fair prognosis means that the Individual has shown progress, but there are still concerns because of her previous pattern of behavior. Tr. at 153. She specifically noted that the only difference she has seen between this current period of sobriety and the Individual’s previous period of sobriety was the treatment the Individual underwent. Tr. at 153. The DOE Psychologist also expressed some concern about the Individual’s openness to returning to alcohol consumption, but said she appreciated the Individual’s honesty and thoughtfulness. Tr. at 154–55. She said she would be concerned about the Individual returning to alcohol consumption because of her history of making poor decisions while under the influence of alcohol. Tr. at 155.

V. Analysis

After meeting with the DOE Psychologist, the Individual began to attend AA and SMART meetings, grief counseling, and alcohol counseling. She has complied with the treatment recommendations made by two DOE-affiliated psychologists, the DOE Psychologist and the OM Psychologist (who is employed by her employer’s EAP). Both psychologists have opined that the Individual has adequately addressed her alcohol issues, although the DOE Psychologist expressed several reservations about the Individual’s recovery. Moreover, the Individual has a fourteen-month period of sobriety, which is documented through the submission of monthly negative PEth test results. However, the Individual has not sufficiently resolved the security concerns raised by her four alcohol-related arrests. While the Individual has nominally taken all the actions recommended by the DOE and OM Psychologists, she still does not appear to have developed sufficient insight into the role that alcohol has played in her life and the threat it poses to the wellbeing of herself and others.⁴ On at least three occasions, the Individual has engaged in criminal activity that could have resulted in death or injury to herself and others. There was a common denominator on each of these occasions: the Individual’s use of alcohol. The Individual’s failure to recognize the role that alcohol has played in her criminal activity is dangerous and her lack of insight and accountability call her present judgment and reliability into question. The Individual’s failure to self-acknowledge and fully address her alcohol problem, rather than just complying with the LSO and her employer’s requirements, indicates her alcohol problem has not been resolved. While the Individual attended counseling and self-help groups for her alcohol problem, those interventions have not convinced her that she has an alcohol problem and needs to permanently commit to sobriety to resolve DOE’s security concerns.

⁴ I note that while the Individual attended a number of online AA meetings, she did not obtain an AA sponsor, work the AA’s Twelve-Step Program, or speak at AA meetings because she would not self-identify as an alcoholic. Accordingly, I find her engagement in AA was minimal and was clearly motivated by her desire to have her clearance reinstated rather than by her concern about the role alcohol had played in her life.

The Adjudicative Guidelines set forth four conditions that *may* mitigate security concerns under Guideline G. Adjudicative Guidelines at ¶ 23(a)–(d). One of these conditions is potentially present in the instant case. However, because the Individual does not recognize that she has an alcohol problem and is not committed to permanent sobriety, I find that the risk is too great that she would return to using alcohol in excess to resolve the security concerns arising from her four alcohol-related arrests, regardless of the existence of any mitigating factors.

Paragraph 23(c) provides that security concerns raised under Guideline G may be mitigated when 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.” Adjudicative Guidelines at ¶ 23(c). While the Individual has a history of relapsing after a one-and-a-half to two-year period of sobriety, she had not received any significant alcohol treatment at that time. As discussed above, the Individual has been attending SMART and AA, as well as participating in counseling to address her alcohol disorder, and both DOE affiliated experts who testified at the hearing agreed that she is making satisfactory progress in her treatment program. Moreover, she has documented her recent abstinence from alcohol use with monthly PEth testing. Accordingly, the mitigating condition set forth at ¶ 23(c) is potentially present in the instant case. However, I do not agree that the Individual has shown that her progress is satisfactory. Even though the OM Psychologist has diagnosed her with an alcohol disorder, Alcohol Dependence, the Individual does not acknowledge that she has an alcohol problem and has refused to identify herself as an alcoholic at the AA meetings she has attended. Moreover, she continues to contemplate returning to alcohol use, even after her history of three DUI/DWI arrests and suspension of her DOE security clearance. Given her history, it is likely that any return to alcohol use on her part would result in future illegal or dangerous behavior. Since the Individual has continued to exhibit poor judgment concerning alcohol, I find the risk that the Individual will return to alcohol to be too great to resolve the security concerns raised under Guideline G.

I therefore find that the Individual has not resolved the security concerns raised under Guideline G.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, I find that the Individual has not resolved the security concerns raised under Guideline G. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. 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