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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: February 21, 2017)
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Case No.: PSH-17-0012

Issued: May 25, 2017

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX 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, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s security clearance should not be restored.²

I. BACKGROUND

The Individual informed the Local Security Office (LSO) that he had been arrested for Driving Under the Influence of Alcohol (DUI). That arrest raised concerns regarding the Individual’s eligibility to hold a security clearance. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on May 26, 2016. Ex. C. Because the PSI did not resolve the security concerns raised by the Individual’s DUI arrest, and previous history of arrests, 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 in order to resolve the substantial doubt regarding his eligibility for 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 OHA. The Director of OHA appointed me as the Administrative Judge in this matter on April 24, 2017. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his mother, an expert witness (the Expert Witness), and two family friends. See Transcript of Hearing, Case No. PSH-17-0012 (hereinafter cited as “Tr.”). The LSO

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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

submitted eight exhibits, marked as DOE Exhibits A through H. The Individual submitted six exhibits, marked as Individual's Exhibits 1 through 6.

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 E, G, and J, of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005) (the Guidelines).

The LSO alleges, under Guideline E, that the Individual: (1) provided false information concerning his drinking and driving during a May 26, 2016, PSI, when he stated that he had not consumed alcohol before driving at any time between his 2008 and 2016, DUIs; (2) provided false information during a March 1, 2016, PSI when he stated that he does not drive after consuming alcohol; and (3) lied to a police officer during his 2016 DUI arrest, when he told the officer that he had not been drinking. The LSO further alleges that a series of three alcohol-related arrests, in 2005, 2008, and 2016, as well as five arrests and citations for relatively minor incidents in 2003, 2004, and 2006, (including a 2006 incident, in which the Individual was arrested for switching tags on retail merchandise to save himself money), reflect poorly upon his judgement, reliability, and trustworthiness. The Individual's history of eight arrests, and false statements, as alleged, adequately justifies the LSO's invocation of Guideline E and raises significant security concerns. "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." Guideline E at ¶ 15. "Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," or "providing false or misleading information concerning relevant facts to an . . . official government representative" could raise a security concern and may be disqualifying. Guideline E at 16(a), (b). Moreover, "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information" can also raise a security concern and may be disqualifying. Guideline E at ¶ 16(c).

The LSO alleges, under Guideline G, that the Individual has a history of three alcohol-related arrests. The Individual's history of alcohol-related arrests, as alleged, adequately justifies the LSO's invocation of Guideline G and raises significant security concerns. 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." Guideline G at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are "Alcohol-related incidents away from work, such as driving while under the influence," and "Habitual or binge consumption of alcohol to the point

of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Guideline G at ¶ 22 (a) and (c).

The LSO alleges, under Guideline J, that the Individual has a history of eight arrests and citations. “Criminal 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.” Guideline J at ¶ 30. The Individual’s history of arrests, as alleged, adequately justifies the LSO’s invocation of Guideline J and raises significant security concerns. Guideline J provides that “A single serious crime or multiple lesser offenses” “could raise a security concern and may be disqualifying.” Guideline J at ¶ 31(a).

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that:

The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.

10 C.F.R. §§ 710.7(a). In rendering this opinion, I have considered the following factors:

The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

See 10 C.F.R. § 710.7(c). 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

The Individual has an extensive history of arrests and citations. Ex. G. The Notification Letter cites the Individual’s arrests for DUI on November 2, 2008, and April 19, 2016, the Individual’s citations for Consuming Alcohol as a Minor on September 24, 2005, Excessive Speed in 2003 and 2004, Inattentive Driving citation in 2003, and Leaving the Scene of an Accident in 2004. Ex. G. The Notification Letter further notes that the Individual was cited for switching tags on merchandise in order to buy a more expensive item at the price of a less expensive item in 2006. Ex. G.

The Individual, who was an initial applicant for a DOE security clearance at the time, submitted an electronic Questionnaire for National Security Positions (e-QIP) on December 3, 2015. On March 1, 2016, the LSO conducted a PSI of the Individual in order to resolve a number of security concerns including those raised by his two alcohol-related arrests and citation for underage alcohol consumption. During this PSI, the Individual confirmed that he had been arrested for DUI in 2008, and for Possession of Alcohol as a Minor in 2005. Ex. D at 2-4, 11. The Individual reported that, as a result of his 2008 DUI, the court ordered him to attend 10 Alcoholics Anonymous (AA) meetings, undergo a substance abuse evaluation, and pay a fine. Ex. D at 7. After his first DUI, he chose to abstain from alcohol use for a year, but then resumed using alcohol. Ex. D at 8-9. The Individual described his current alcohol use as “Probably, twice a month, on the weekends - five to six beers, maybe.” Ex. D at 9. He admitted that he would, on rare occasions, consume as many as eleven beers. Ex. D at 9-10. The Individual stated that he had a rule for himself: no driving after using alcohol. Ex. D at 10. The Individual insisted that he had not violated this rule. Ex. D at 10. Apparently, the information provided by the Individual resolved the security concerns about the Individual since he subsequently received a DOE security clearance.

On April 17, 2016, less than two months after his March 1, 2016, PSI, the Individual was again arrested for DUI. Ex. B. Because of the security concerns raised by the Individual’s April 17, 2016, DUI arrest, the LSO conducted a PSI of the Individual on May 26, 2016. During this PSI, the Individual admitted consuming eight to ten beers, over a three hour period, before his April 17, 2016, arrest. Ex. C at 3-4. The Individual stated that he did not feel intoxicated at the time of his arrest. Ex. C at 4-5. The Individual indicated that he rarely consumed eight to ten beers in a sitting, estimating that he would do so about four times a year. Ex. C at 4-5. The interviewer asked the Individual when he last consumed eight to ten beers at one time. The Individual responded by stating that he last consumed that amount of alcohol when he was arrested for DUI in 2008. Ex. C at 5. The Individual also stated that the last time he used alcohol before driving was in 2008, when he was arrested for DUI. Ex. C at 6. The Individual initially stated that he had never operated a motor vehicle after consuming alcohol between his two DUIs. Ex. C at 8. Subsequently during the PSI, he stated that he uses a “five beer rule” under which he does not operate a motor vehicle if he has consumed more than five beers. Ex. C at 16-17. He then admitted that he would drive after consuming less than five beers on a monthly basis between his two DUI charges. Ex. C at 17-19. The Individual admitted that he was not being honest during his March 1, 2016, PSI when he said he never operated a motor vehicle after using alcohol. Ex. C at 19. He denied having an “alcohol problem” but admitted he may have had one in his “earlier days.” Ex. C at 10. He stated that he reduced his alcohol consumption to one to five beers in a sitting, and drinking once or twice a month, instead of every weekend. Ex. C at 11, 13. The Individual reported that his last use of alcohol occurred on April 17, 2016, the night of his second DUI. Ex. C at 8. The Individual reported that he had not sought any professional substance abuse counseling. Ex. C at 12, 14. He reported that he quit drinking for a year after his 2008 DUI. Ex. C at 12. The Individual stated his intention to quit drinking. Ex. C at 14. The Individual admitted telling an arresting officer that he had not been drinking during his April 17, 2016, DUI arrest. Ex. C at 15.

V. ANALYSIS

Guideline G

The Individual attempted to resolve the concerns regarding his alcohol use by presenting the testimony of a Licensed Clinical Professional Counselor who is certified in alcohol and drug counseling (the Expert Witness). Tr. at 22. The Expert Witness testified that after he had met with the Individual on two occasions to evaluate him and to administer two standardized screening tests, the GAIN-I³ and the SASSI,⁴ he concluded that the Individual did not meet the criteria for any of the alcohol-related disorders set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fifth Edition (DSM-5).⁵ Tr. at 24, 32, 38-40. The Expert Witness' testimony was not on point, however; the Notification Letter did not claim that the Individual has an alcohol use disorder, but rather relied upon the Individual's history of three alcohol-related arrests, including a recent DUI, and the information in the record indicating that the Individual consumed eight to ten beers on April 17, 2016, to conclude that the Individual's alcohol consumption raises significant security concerns under Guideline G. Therefore the question before me, under Guideline G, is whether the Individual has sufficiently mitigated the concerns arising under Guideline G at ¶ 22 (a) and (c).

Guideline G sets forth four conditions which can mitigate security concerns arising from an individual's problematic use of alcohol. In the present case, the Individual has not established the presence of any of these four conditions. Specifically, the Individual has not shown that "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 good judgment." Guideline G at ¶ 23(a). The Individual's last known instance of excessive alcohol use occurred over a year ago. In many circumstances, that might have constituted a sufficient amount of time to resolve security concerns arising under Guideline G. However, in the present case, the Individual has not convinced me that his excessive alcohol use is unlikely to recur: his history of three alcohol-related arrests, and his demonstrated lack of insight into both the dangers posed by excessive alcohol use, and the problems alcohol has caused for him, shows that he has not learned from his mistakes and he has not provided me any reason to believe he has gained any insight that will prevent him from making the same mistakes in the future. Moreover, the circumstances surrounding the Individual's most recent alcohol-related arrest, including the Individual's lack of candor in the ensuing PSI (discussed below) cast doubt on the Individual's current reliability, trustworthiness, or good judgment. Nor has the Individual acknowledged his problem with alcohol, provided evidence of actions taken to overcome this problem, or established a pattern of abstinence or responsible use. Guideline G at ¶ 23(b). The Individual denies having an "alcohol problem"⁶ and has not taken any action to address his propensity to use excessive amounts of alcohol, except to allegedly reduce his alcohol consumption to one to five beers in a sitting, and drinking once or twice a month, instead of every weekend, and allegedly refraining from drinking and driving. Nor has the Individual met either of the other two mitigating conditions set forth in Guideline G at ¶ 23 (c) or (d), given that the Individual has not

³ Global Appraisal of Individual Needs.

⁴ Substance Abuse Subtle Screening Inventory.

⁵ The Expert Witness indicated that his evaluation was based solely upon the information provided to him by the Individual, but noted that the SASSI incorporates a reliable validity scale, which did not show that the Individual was being deceitful or inconsistent when taking the SASSI. Tr. at 32-33.

⁶ Tr. at 91.

participated in any program to address his excessive drinking, other than the 10 AA meetings and eight-hour alcohol education class mandated by the court as a result of his 2008 DUI, which were obviously unsuccessful. The Expert Witness reported that, as recently as March 21, 2017, the Individual stated to him that “he has not quit using alcohol and that he drinks 1-2 times a week, about 4 beers each time [and that the Individual] stated the last time he had been intoxicated was about a month ago and that he had drunk about 10 beers.” Ex. 6 at 6. Interestingly, the Individual had stated his intention to quit drinking during his May 26, 2016, PSI. Ex. C at 14.

Accordingly, I find that the Individual has not resolved the security concerns raised under Guideline G by his habitually excessive alcohol consumption.

Guideline E

During his testimony at the hearing, the Individual admitted that he had lied during the May 26, 2016, PSI when he stated that he had not been driving after drinking between his two DUIs. Tr. at 92-93.⁷ To his credit, the Individual repeatedly apologized for lying during the May 26, 2016, PSI. Tr. at 93, 96.

Guideline E sets forth four conditions which can mitigate security concerns arising from an individual’s Personal Conduct. In the present case, the Individual has not established the presence of any of these four conditions. Specifically, the Individual has not shown that he “made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Guideline E at ¶ 17 (a). The Individual has not shown that his “omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process.” Guideline E at ¶ 17(b). Similarly, the Individual has not shown that “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” Guideline E at ¶ 17(C). While the Individual has recently acknowledged his false statement, he has not “obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused [his] untrustworthy, unreliable, or other inappropriate behavior,” and he has not provided any reason to believe “that such behavior is unlikely to recur.” Guideline E at ¶ 17(d).

Accordingly, I find that the Individual has not resolved the security concerns raised under Guideline E by his provision of false information concerning his drinking and driving during a May 26, 2016, PSI, when he stated that he had not consumed alcohol before driving at any time between his 2008 and 2016 DUIs.

Guideline J

⁷ The Notification Letter also contends that the Individual provided false information during a March 1, 2016, PSI when he stated that he does not drive after consuming alcohol and lied to a police officer during his 2016 DUI arrest, when he told the officer he had not been drinking. The first assertion is not proven conclusively, as is the case with the Individual’s false claim that he did not drink and drive between the two DUIs. The Individual’s false statement to the arresting officer can clearly be attributed to his extreme state of intoxication at the time that statement was made. The Notification Letter’s allegation that the Individual intentionally omitted reporting an arrest that the LSO admits occurred outside the reporting period was inappropriately included in the Notification Letter.

The Individual has a remarkable history of eight arrests and citations. Seven of these arrests and citations occurred during a period beginning in 2003 and ending in 2008. His recent arrest in 2016 reactivated that pattern, and raises the unresolved possibility that the lack of judgment, honesty, and reliability exhibited by the actions leading to these arrests and citations were not due to the Individual's relative youth at the time, but rather to a more long-standing issue.

Guideline J sets forth four conditions which can mitigate security concerns arising from an individual's criminal activity. None of these conditions are sufficiently present in the instant case. The Individual has not shown that: "So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Guideline J at ¶ 32(a). The Individual's most recent arrest occurred approximately one year ago, which in some circumstances could provide mitigation; however, the Individual's conduct reactivated a longstanding pattern of criminal activity, and the Individual's lack of candor during the ensuing PSI casts continuing doubt upon the Individual's reliability, trustworthiness, and good judgment. Moreover, there is no evidence in the record showing that the Individual was pressured or coerced into committing the DUI and no evidence that the Individual did not operate his motor vehicle under the influence of alcohol (even though the DUI was dismissed by the court because a breathalyzer test was administered improperly). Guideline J at ¶ 32(b) and (c). Most importantly, there is insufficient evidence of successful rehabilitation; while the Individual did express remorse at the hearing for his misrepresentation, he has not exhibited any insight into his problematic alcohol use which has resulted in three alcohol-related arrests. Accordingly, I find that the Individual has not resolved the security concerns, raised under Guideline J by his pattern of eight arrests and citations.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G, H, and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not sufficiently mitigated the security concerns raised under Guideline G, H, and J. Accordingly, the Individual has not demonstrated that restoring 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 not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: May 25, 2017