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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:	April 3, 2017)	Case No.: PSH-17-0019
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Issued: July 12, 2017

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ 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.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (Adjudicative Guidelines) (December 29, 2005), I have determined that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization. He was initially granted access authorization over 15 years ago. Exhibit 10 at 2. A holder of access authorization is required to report certain occurrences and, in June 2016, the individual properly self-reported that he had been arrested and charged with both driving under the influence of alcohol (DUI) and an implied consent violation (*i.e.*, refusing to take a breathalyzer or blood test for alcohol at the time of his arrest). *See* Exhibit 7. As a result of this information, the local security office (LSO) conducted a personnel security interview (PSI) with the individual in August 2016. *See* Exhibit 13. The PSI did not resolve the security concerns arising with respect to the

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

individual's alcohol consumption and, as a result, the LSO referred the individual to a DOE consultant psychologist (DOE psychologist) for an evaluation. *See* Exhibit 4.

In October 2016, the individual was evaluated by the DOE psychologist. *See* Exhibit 10. Since neither the PSI nor the psychological evaluation resolved the security concerns arising with respect to the individual's alcohol consumption, the LSO informed the individual in a letter dated January 23, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information raised one or more security concerns under "Guideline G: Alcohol Consumption" of the Adjudicative Guidelines (Guideline G).² *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 14 numbered exhibits into the record and presented the testimony of one witness, the DOE psychologist. The individual, represented by counsel, introduced 37 lettered exhibits (Exhibits A – KK) into the record and presented the testimony of five witnesses, including that of himself, his wife, and his treating psychologist. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.³

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her 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).

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

The individual is afforded a full opportunity to present evidence supporting his or her 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited Guideline G as the basis for suspending the individual's security clearance. Guideline G relates to security risks arising from alcohol consumption. 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. *See* Adjudicative Guidelines at Guideline G ¶ 21. With respect to Guideline G, the LSO relied upon the October 2016 written evaluation by the DOE psychologist which concluded that the individual met the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)*, for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation, and that such disorder is an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability. Ex. 1 at 1; Ex. 10 at 15-16. Additionally, the LSO cited, *inter alia*, that the individual had been: (1) arrested and charged in both June 2016 and April 2007 for DUI and implied consent violations; and (2) disciplined as a college student for having alcohol in his dormitory room. Ex. 1 at 1.

In light of the information available to the LSO, the LSO properly invoked Guideline G.

IV. Findings of Fact

The individual does not dispute the facts alleged in the Notification Letter and, at the hearing, stipulated as to the factual accuracy of the summary of security concerns attached to the Notification Letter. Tr. at 11-13. I have carefully considered the totality of the record, including the individual's stipulation, in reaching the findings of fact set forth below.

While a university student, the individual's university disciplined the individual for violating university policy by having alcohol in his dormitory room. Ex. 1 at 1; Tr. at 11-13.

The individual was twice charged and arrested for DUI and implied consent violations, once in 2007 and once in 2016. Ex. 1 at 1; Tr. at 11-13. Following the 2016 arrest, the individual's employer referred him to an outside resource for an alcohol assessment and, based upon that assessment, recommended that the individual undertake treatment for an Alcohol Use Disorder. Ex. 6 at 1.

The individual commenced an Intensive Outpatient Program (IOP) for alcohol treatment approximately one week after his 2016 arrest for DUI. Ex. I at 1. He completed the IOP on schedule in August 2016 and, thereafter, has complied with the IOP's aftercare recommendations of participating in one aftercare session and three Alcoholic Anonymous (AA) meetings each week. Ex. I at 1; Ex. JJ at 1; Ex. KK at 1.

In October 2016, the individual was evaluated by the DOE psychologist, who concluded that the individual met the *DSM-5* criteria for Alcohol Use Disorder, Moderate. Ex. 10 at 14-15. While acknowledging the individual's alcohol treatment and four months of alcohol abstinence as of the date of the psychological evaluation, the DOE psychologist opined that the individual had not evidenced adequate rehabilitation and reformation of his alcohol disorder. *Id.* at 14-16. She opined that the individual should maintain abstinence for a minimum of 12 months, continue his IOP's recommended aftercare, and undertake both marital and individual therapy. *Id.* at 15-16.

Following receipt of the DOE psychologist's written evaluation, he and his wife continued their marital therapy and the individual commenced individual therapy. Tr. at 33, 55-58, 171-175.

As of the date of the hearing, the individual had been abstinent from alcohol for 12 months and continued to be compliant with the aftercare recommendations of his IOP. Ex. JJ at 1; Ex. KK at 1; Tr. at 96. The marital and individual therapy recommended by the DOE psychologist was continuing. *Id.* at 55-58, 185, 191, 203. The individual testified as to his present intent to continue, for an indefinite period of time, both his alcohol abstinence and his weekly participation in one IOP aftercare session and three AA meetings. *Id.* at 96-97, 165, 203.

At the hearing, both the DOE psychologist and the individual's treating psychologist testified as to the adequacy of the individual's rehabilitation and reformation of his Alcohol Use Disorder. *Id.* at 183-187, 192, 198-199, 205-207.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁴ and the Adjudicative

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct,

Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The individual disputes neither the facts alleged by the LSO in the Notification nor the diagnosis by the DOE psychologist that the individual suffers from an Alcohol Use Disorder. Instead, he argues that he has sufficiently mitigated the Guideline G security concerns noted by the LSO through: (1) his abstinence from alcohol for over 12 months; (2) his completion of an IOP; (3) his compliance with both the IOP's aftercare recommendations and the DOE psychologist's recommendations; and (4) his future intent to continue such abstinence and aftercare regiment.

B. Administrative Judge Evaluation of Evidence

As an initial matter, I note that legitimate security concerns exist as a result of the individual's consumption of alcohol. The individual's DUI arrests in 2007 and 2016 are disqualifying. Additionally, the DOE psychologist and all of the professionals involved with the individual's treatment agree that he suffers from, at a minimum, Alcohol Use Disorder, Moderate. Ex. 6 at 1; Ex. B at 1; Ex. 10 at 13. The individual does not dispute these diagnoses and, actually, fully accepts them. Tr. at 11, 96. Therefore, the issue before me is whether the individual has sufficiently mitigated the security concerns arising from his alcohol consumption.

The individual credibly testified that he has been abstinent from alcohol since his DUI arrest in June 2016. *Id.* at 96. This testimony was corroborated by the testimony of his wife, as well as by the results of random testing done by his employer, tests conducted by his IOP, and an independent hair follicle test that the individual took of his own initiative in anticipation of the administrative review hearing. Ex. D; Ex. E; Ex. GG; Tr. at 32. The DOE psychologist testified as the final witness at the hearing, having been present during the testimony of all other witnesses, that as of the date of the hearing the individual had established an appropriate pattern of abstinence from alcohol. *Id.* at 201. *Cf.* Adjudicative Guidelines at Guideline G ¶ 23(b) (mitigation of alcohol related security concerns possible where an individual acknowledges his alcoholism, evidences actions taken to overcome the problem and has established a pattern of abstinence).

The individual's abstinence is supported by his having completed an IOP and his continuing participation (for ten months, as of the date of the hearing) in a weekly aftercare

the age and maturity at the time of the conduct, the voluntariness of his 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.

session offered by his IOP provider and in at least three AA meetings each week. Ex. I at 1; Ex. JJ at 1; Ex. KK at 1; Tr. at 164-165. The documentation from his IOP and the testimony of his AA sponsor both support that the individual's participation in these sessions is active and meaningful. Ex. JJ at 1; Tr. at 81-92. The individual credibly testified that his present intent is to permanently abstain from alcohol and to continue his participation in both the IOP's aftercare program and AA indefinitely. *Id.* at 96-97, 165, 203. The DOE psychologist testified that the testimony presented at the hearing demonstrated that the individual has continued to have growing insight into his alcohol disorder. *Id.* at 194-196. Both she and the individual's treating psychologist opined at the hearing that the individual had evidenced adequate rehabilitation and reformation of his Alcohol Use Disorder and has a favorable prognosis. *Id.* at 183-187, 192, 198-199, 205-207. *Cf.* Adjudicative Guidelines at Guideline G ¶ 23(d) (mitigation of alcohol related security concerns possible where an individual has completed outpatient counseling along with any aftercare, demonstrated a clear and established pattern of abstinence and has received a favorable prognosis by a duly qualified medical professional).

For the reasons set forth above, I find that the individual has resolved the security concerns associated with Guideline G arising with respect to his alcohol consumption.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline G. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: July 12, 2017