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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 17, 2017)	Case No.:	PSH-17-0026
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Issued: July 11, 2017

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As 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 (December 29, 2005) (Adjudicative Guidelines), I conclude that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the individual’s alcohol use. In order to address those concerns, the LSO summoned the individual for an interview with a personnel security specialist in August 2016 (PSI). Following the August 2016 PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychiatrist.

On March 17, 2017, the LSO sent the individual a letter (Notification Letter) advising her that the DOE possessed reliable information that created substantial doubt regarding her eligibility to continue to hold an access authorization. In an attachment to the Notification Letter, the LSO

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.

explained that the derogatory information fell within the purview of Guideline G (alcohol consumption) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual presented the testimony of two witnesses and testified on her own behalf. The DOE Counsel presented the testimony of the DOE psychiatrist. The DOE submitted eleven exhibits (Exhibits 1-11) into the record, and the individual also tendered eleven exhibits (Exhibits A-K). The exhibits will be cited in the 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.²

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).

The individual must come forward at the hearing with evidence to convince the DOE that restoring 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). The individual is afforded a full opportunity to present evidence supporting 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). Hence, 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

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's continued eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines, which 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* Guideline G at ¶ 21.

In citing Guideline G, the LSO stated that it was relying upon the November 2016 written evaluation by the DOE psychiatrist. The LSO stated that the DOE psychiatrist had concluded that the individual was a user of alcohol habitually to excess and met both the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)*, for Alcohol Use Disorder, and the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*, for Alcohol Dependence in Early Full Remission, in each case without adequate evidence of rehabilitation or reformation.³ Additionally, the LSO alleged that the individual: (1) acknowledged during the PSI that on one occasion, at a local bar, she consumed alcohol to an extent that caused her to black out; (2) admitted during the PSI that from 2014 to June of 2016, she consumed seven to eight beers to the point of intoxication almost nightly; and (3) was arrested and charged with Driving Under the Influence (DUI) in 2007. I conclude that, under the circumstances, Guideline G was properly invoked.

IV. Findings of Fact

Following a divorce, the individual visited an Employee Assistance Program (EAP) therapist in December 2015. *Tr.* at 12, 60-61. She expressed that she was depressed and revealed that she had a problem with alcohol use. *Id.* at 13-14. She continued to visit the therapist throughout January 2016. *Id.* at 15. In March 2016, the individual was involved in an altercation at a local bar while she was intoxicated. *Id.* at 63-65. A concerned person called the therapist and informed him of the altercation. *Id.* at 16. In May 2016, the therapist called the individual into his office and confronted her about the incident. *Id.* at 15-16. The individual did not remember much of the incident due to an alcohol-induced blackout. *Id.* at 64. The therapist encouraged the individual to seek treatment for her alcohol consumption. *Id.* at 16-17.

In May 2016, the individual sought out an intensive outpatient treatment program. *Id.* at 71-72. She self-reported her admittance into the treatment program to the LSO on June 8, 2016. *Ex.* 6. She ceased using alcohol on June 10, 2016, and she successfully completed the twenty-week-long treatment program in November 2016. *Id.* at 37, 39, 77; *Ex.* D. Just weeks before her completion of the program, the LSO sent the individual for evaluation with the DOE psychiatrist. *Ex.* 8. He

³ I have reviewed the DOE consultant psychiatrist's evaluation, and note that, contrary to the LSO's assertion, his diagnosis was not in fact based upon the DSM-5. The psychiatrist diagnosed only Alcohol Dependence in Early Full Remission pursuant to the diagnostic criteria set forth in the DSM-IV-TR. *See Ex.* 8.

determined that the individual suffered from Alcohol Dependence with Physiological Dependence in Early Full Remission. *Id.* at 9. At the time of the evaluation, the individual had been abstinent for approximately five months and, although the psychiatrist noted that she had “made an excellent start toward rehabilitation[,]” he recommended that she have at least nine months of sobriety and treatment to show adequate evidence of reform and rehabilitation. *Id.* at 8.

Although she has now completed the intensive outpatient treatment program and has remained abstinent from alcohol for over a year, the individual continues to attend three hours of aftercare and counseling every other week to prevent relapse. *Tr.* at 73, 91. She also attends weekly Alcoholics Anonymous (AA) meetings. *Id.* at 79. Finally, as a result of the individual’s self-reporting and these administrative proceedings, the individual’s employer has administered fifty-one blood alcohol content tests, each of which resulted in a 0.0 reading. *Ex. E; Ex. K.*

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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s security clearance 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.

At the hearing, the individual testified that she has struggled with depression since she was a child, and she used alcohol to self-medicate. *Tr.* at 61-62. The individual stated that when the EAP therapist called her into his office and confronted her about the March 2016 incident in the bar, she could not remember the altercation due to a blackout, and she was “embarrassed,” “horrified,” and “disappointed in” herself. *Id.* at 68. She explained that after she met with the therapist, she “cut down” on her alcohol use but was fearful of becoming abstinent because alcohol had become a part of her and a part of her routine. *Id.* at 69-70. The individual described how she felt that she “hit rock bottom” and did not like who she was, and at that point, she sought out the intensive outpatient treatment program. *Id.* at 71-72. The individual testified that she completed the program, and continues to attend the aftercare programs, counseling, and AA meetings. *Id.* at 73, 79. She stated that she has a strong support system in her boyfriend, her EAP therapist, her alcohol treatment counselor, her AA colleagues, and her family. *Id.* at 87-89. The individual explained that now that she has stopped drinking, she has a positive outlook on life, better self-esteem and more confidence, and she is stronger than she ever thought she was. *Id.* at 62, 93.

To support her reports of positive progress and abstinence, the individual called two witnesses: her EAP therapist and her alcohol treatment counselor. *Id.* at 10, 33. Both witnesses testified that, to the best of their knowledge, the individual has remained abstinent since June 10, 2016. *Id.* at 19, 22, 37, 43. Additionally, both witnesses echoed the individual’s testimony, stating that she has developed a strong support system through her recovery. *Id.* at 30, 51. The individual’s alcohol treatment counselor affirmed that she voluntarily and successfully completed the intensive inpatient treatment program, continues therapy and aftercare, and has the tools to deal with alcohol-

related issues in the future. *Id.* at 39-40, 44-45, 50. Similarly, the individual's EAP therapist stated that he is "very optimistic about her ... continue[d] abstinence and her success." *Id.* at 22.

The DOE psychiatrist testified after listening to the testimony of all of the other witnesses. *Id.* at 108. He explained that not only has the individual maintained her sobriety, but she is also in recovery and not demonstrating any "alcohol-like behaviors." *Id.* at 109. He stated that the individual realizes the severity of the negative impacts that alcohol has had on her life, and she has a good support system and the appropriate tools to deal with her depression without alcohol. *Id.* at 109-110. The psychiatrist noted that the individual has a "good prognosis" with a low risk of relapse. *Id.* at 110. He additionally stated that she has shown "adequate evidence of reform and rehabilitation at this time" and noted that not only has she complied fully with his recommendations, but she has taken additional steps to maintain her sobriety. *Id.* at 109, 111.

Considering these facts, I conclude that the security concerns raised under Guideline G have been sufficiently mitigated. Prior to receiving the Notification Letter, the individual voluntarily sought out and successfully completed an intensive outpatient alcohol treatment program. She continues to engage in therapy, participate in aftercare groups, and attend weekly AA meetings. The individual has been abstinent for over a year and has fulfilled all recommendations provided in the DOE psychiatrist's report. *See* Guideline G at ¶ 23(d). With regard to the incident of DUI cited in the Notification Letter, I conclude that the event, which occurred nearly ten years ago, is unlikely to recur, given the amount of time that has passed and the individual's continued abstinence. *See id.* at ¶ 23(a). Furthermore, the DOE psychiatrist indicated at the hearing that the individual has now shown adequate evidence of reformation and rehabilitation, and expressed his opinion that her risk of relapse is now low. *See id.* at ¶ 23(d). Not only do I defer to the DOE psychiatrist's expert opinion in this case, but I further conclude that his revised opinion is consistent with the witness testimony and my observations of the individual.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline G. However, after considering all 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 find that the individual has brought forth sufficient evidence to resolve the security concerns associated with that guideline. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should restore the individual's access authorization.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: July 11, 2017