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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 11, 2017 ) Case No.: PSH-17-0023  
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Issued: August 2, 2017

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In August 2016, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol-related arrests and his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in October 2016 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Abuse. The DOE psychologist further concluded that the individual’s frequent intoxications raise a concern of him being a user of alcohol habitually to excess with no evidence of rehabilitation or reform. He further

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<sup>1</sup> 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.

concluded that the individual's Alcohol Abuse and use of alcohol habitually to excess can cause significant defects in judgment and reliability.

In January 2017, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one or more security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (Adjudicative Guidelines).

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony and that of three witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE and the individual submitted a number of written exhibits (Ex.) prior to the hearing.

## **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 denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> 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 his 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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay 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 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 in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, there are various security concerns under Guideline G, Alcohol Consumption and Guideline E, Personal Conduct. To support Guideline G, the LSO cites the DOE psychologist's diagnosis of Alcohol Abuse, the individual's alcohol use, and the individual's three alcohol-related arrests. As for Guideline E, the LSO cites the individual's most recent alcohol-related arrest on July 10, 2016, as well as statements made during his 2016 PSI and his psychological evaluation regarding his alcohol consumption. *See Ex. 1.*

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Guidelines E and G. First, Guideline E addresses "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, "as this "can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Guideline E at ¶ 15. Second, with respect to Guideline G, the excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

### **IV. Findings of Fact**

The individual acknowledged a history of alcohol use beginning at approximately 18 years of age. *Ex. 8 at 6.* According to the individual, he drank on a weekly basis at that time, consuming four or five beers over about two hours. *Id.* From 2009 to 2012, the individual increased his consumption of alcohol in order to get the desired feeling of intoxication. *Id.* In February 2009, the individual was cited with Minor in Possession of Alcohol. He admitted that he had consumed more than six, 12-ounce beers and felt intoxicated. Between 2010 and September 2012, the individual stated that his tolerance continued to increase which resulted in the tendency to drink seven or eight drinks over three or four hours, once a week. *Id.* During his PSI, he admitted that once a month he would binge and have 10 to 14 drinks over five or six hours and that he would feel intoxicated. *Id.* On September 15, 2012, the individual was arrested and charged with Aggravated Driving while Under the Influence and registered a Blood Alcohol Content of .18 and .17. Then, on July 10, 2016, the individual was arrested and charged with Disorderly Conduct. *Id.* He admitted that prior to the arrest, he had consumed five, 12-ounce beers over a five-hour period. *Ex. 11 at 11-63, 74-75.* During the individual's 2016 PSI, the individual stated that he had not consumed any alcohol since his July 2016 arrest. *Id.* at 68.

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On October 3, 2016, the DOE psychologist evaluated the individual. In his Report, he concluded that, under *the Diagnostic and Statistical Manual Fourth Edition Text Revision*

(*DSM-IV-TR*), the individual meets the criteria for Alcohol Abuse without adequate evidence of rehabilitation or reformation. Ex. 8 at 10. The DOE psychologist also concluded that the individual's frequent intoxications raise a concern of him being a user of alcohol habitually to excess which, together with Alcohol Abuse, can cause significant defect in judgment and reliability. *Id.* During his psychological evaluation in October 2016, the individual admitted to consuming "a few beers and whatnot" while in Canada visiting his parents in late July 2016. *Id.* at 8. He further admitted to consuming "two regular beers" over two-and-one-half hours on September 29, 2016, despite initially telling the DOE psychologist that he has been abstaining from alcohol since his July 2016 arrest. *Id.*

## V. Analysis

I have thoroughly considered the record in 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)<sup>2</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. Based on the facts in this record, I cannot 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.

The individual does not dispute the DOE psychologist's diagnosis that he suffers from Alcohol Abuse. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

### A. Evidence of Rehabilitation and Reformation

During the hearing, the individual testified about his alcohol use since his July 2016 arrest. Transcript of Hearing (Tr.) at 120. He testified that he has tried to evaluate how alcohol fits into his life after his arrest and how he should modify his drinking. *Id.* The individual testified that he has kept a log of his alcohol consumption since his 2016 arrest, stating that his consumption has ranged from no alcohol to three-to-four beers on various dates. He testified that he did not drink alcohol between August 9, 2016 and September 9, 2016. The individual acknowledged that his effort to control his drinking during this time period was difficult and stated that he did not know how his decision to drink or not to drink would impact his future. *Id.* at 124. According to the individual, he was trying to follow a "low-risk drinking" model by engaging in what he considered to be responsible drinking on certain occasions and having periods of abstinence at other times. *Id.* He testified that he was not told that there was a mandatory requirement to completely abstain from alcohol. However, he acknowledged that the DOE psychologist

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<sup>2</sup> 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, 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.

“indirectly” suggested total abstinence. *Id.* at 130. The individual testified that he has abstained from alcohol since February 6, 2017, the date on which he read the DOE psychologist’s report. *Id.* at 136. He stated that he believes the DOE psychologist’s evaluation of him was “a blessing in disguise” and accurately assessed information about him related to his personality and his alcohol abuse. He further testified that the DOE psychologist’s evaluation had a profound effect on what he was learning about himself as it related to alcohol. *Id.* Finally, the individual testified that his future intention is to remain abstinent and to follow the DOE psychologist’s recommendations which he states that he now fully understands since reading the Report in February 2017. *Id.* at 137. He stated that he has been abstinent now for about four months and has recently had one round of alcohol testing completed as suggested by the DOE psychologist. As of the date of the hearing, the results of that testing were not yet available. *Id.* at 138. In addition, the individual testified that he has completed nine out of 12 therapy sessions. He testified that he believes that therapy has changed his attitude toward alcohol and has helped him overcome his denial of being an abuser of alcohol. *Id.* at 147.

During the hearing, the individual also offered the testimony of the Employee Assistance Program (EAP) psychotherapist, a licensed counselor, and his supervisor. The psychotherapist testified that she met the individual on August 4, 2016, after the individual’s alcohol-related arrest. *Id.* at 38. She stated that she has had 19 sessions with the individual and believes the individual was an “immature, party guy” who now has more insight into his behavior. *Id.* The psychotherapist testified that she suggested that the individual stay in the lowest drinking category or adhere to low-risk drinking, but that it would be safer to completely abstain from alcohol. *Id.* at 44-45. She stated that the individual grappled with total abstinence, but came to his own decision that he should completely abstain. *Id.* at 46-47. The psychotherapist testified that, according to the individual, he has been abstinent since February 6, 2017. She stated that she believes the individual has been open and compliant during his sessions and further opined that the individual’s prognosis is good if he remains abstinent. *Id.* at 53. The counselor who was referred to the individual by the psychotherapist corroborated the individual’s testimony that he has completed nine out of 12 weekly counseling sessions. He was unable to opine on the individual’s prognosis until he has a follow-up interview with him. Finally, the individual’s supervisor, who has supervised the individual since October 2014, testified that the individual called him to explain his July 2016 alcohol-related arrest. *Id.* at 11. He stated that the individual was embarrassed and disappointed with himself. *Id.* at 13. The supervisor further testified that the individual is an honest and trustworthy person who exercises good judgment. He stated that he has never observed the individual abuse alcohol. *Id.* at 14.

In his October 2016 Report, the DOE psychologist recommended that the individual remain abstinent for a minimum of nine months to show adequate evidence of rehabilitation or reformation. He also recommended that the individual engage in therapy for at least six months to address his “mental tendencies, such as not being honest or abiding by rules, which can cause defects in his reliability and his judgment.” Ex. 8 at 11. After listening to all of the testimony at the hearing before testifying himself, the DOE psychologist opined that the individual has a low probability of success of remaining abstinent at this point in the individual’s recovery process. *Id.* at 168. He further testified that it will take a while for the individual to change parts of his personality that have affected his judgment and reliability, and he stated that he believes the individual is in the process of maturing. *Id.* at 169. The DOE psychologist also opined that the

individual should continue psychotherapy sessions for a few more months to address his immaturity and attitude towards alcohol. *Id.* at 168.

## **B. Administrative Judge's Evaluation of the Evidence**

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).<sup>3</sup> At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has a low probability of maintaining abstinence and has not achieved adequate rehabilitation and reformation at this time. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns alcohol consumption. *See* Adjudicative Guideline G, ¶ 23. In this case, the individual has not adequately resolved the security concerns for the following reasons: (1) he has not established that his behavior occurred under such unusual circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness or good judgment; (2) although the individual has acknowledged his alcohol problem, he has not yet established a pattern of abstinence, having achieved only four months of abstinence as of the date of the hearing; (3) although the individual is currently participating in counseling sessions, he has not demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, and has not received a favorable prognosis by a duly qualified medical professional; and (4) the DOE psychologist has opined that the individual has a low probability of success of remaining completely abstinent. *Id.* For these reasons, I find that the individual has not sufficiently resolved the DOE's security concerns under Guideline G.

## **C. Guideline E: Personal Conduct**

The key issue under Guideline E is whether the individual brought forth sufficient evidence to demonstrate that he is reliable, trustworthy, and no longer vulnerable to exploitation, manipulation, or duress as a result of his conduct. 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. *See* Guideline E at ¶ 15. Under Guideline E, conditions that may mitigate security concerns include 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" or "the individual has acknowledged the behavior and obtained counseling to change the behavior . . . and such behavior is unlikely to recur." *Id.* at ¶ 17 (c) and (d).

As stated above, the individual provided misleading statements about his alcohol use after his July 2016 arrest, stating during his PSI that he had not consumed any alcohol since the arrest. However, during his psychological evaluation, he stated that he consumed "a few beers and whatnot" in late

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<sup>3</sup> Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

July 2016. He further admitted to consuming alcohol on September 29, 2016, despite telling the DOE psychologist that he had abstained since his arrest. I find the individual's misleading statements regarding his alcohol use to be inextricably intertwined with the individual's Alcohol Abuse.

In his report and during the hearing, the DOE psychologist opined, with respect to the individual's Alcohol Abuse, that the individual should be abstinent for a minimum of nine months and that his length of therapy should be at least six months. He opined that the individual has mental tendencies, such as not being honest or abiding by rules, which can cause defects in his reliability and judgment. After listening to the hearing testimony, the DOE psychologist opined that the individual has a low probability of remaining abstinent at this time and should continue with his psychotherapy sessions on a weekly basis for several more months. As of the date of the hearing, the individual had been totally abstinent from alcohol for a little over four months. In light of the DOE psychologist's current prognosis for the individual as well as the individual's relatively short period of abstinence and need for continued therapy, I am not yet convinced that the individual's behavior with respect to his alcohol use and the misleading statements about his use are unlikely to recur or do not cast doubt on his reliability, trustworthiness or good judgment. Therefore, I find that the individual has not resolved the security concerns under Guideline E.

## **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 Guidelines G and E. 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 not brought forth convincing evidence to adequately resolve the security concerns associated with Guidelines G and E. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and security, and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: August 2, 2017