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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: May 30, 2017)	Case No.: PSH-17-0038
)	
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Issued: August 8, 2017

Administrative Judge Decision

Janet R.H. Fishman, 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 not be restored.

I. Background

The individual is employed by a DOE contractor in a position requiring a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the individual’s alcohol use. Additionally, the individual self-reported that he had pled no contest to disorderly conduct. In order to address those concerns, the LSO summoned the individual for a Personnel Security Interview (PSI) in August 2016. Following the August 2016 PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychologist.

On April 27, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his 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) and Guideline J (criminal conduct) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his 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 one witness and testified on his own behalf. The DOE Counsel presented the testimony of the DOE psychologist. The DOE submitted twenty-three exhibits (Exhibits 1-23) into the record. The individual did not tender any exhibits. The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric 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 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 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 by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

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.

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 to hold an access authorization. The information in the letter specifically cited Guidelines G and J of the Adjudicative Guidelines, which relates to security risks arising from alcohol consumption and criminal conduct respectively. 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. Criminal activity creates doubt with regard to a person's judgment, reliability, and trustworthiness. *See* Guideline J at ¶ 30.

In citing Guidelines G and J, the LSO alleged that the individual was arrested for and charged with: (1) the 2016 Aggravated Assault Against a Household Member with a deadly weapon after he admitted to consuming three to four beers; (2) Driving under the Influence (DUI) and Open Container in 1992, resulting in a car crash with another vehicle; (3) Driving While Intoxicated (DWI) and Open Container in 1984; and (4) DWI in the mid-1980s. Specifically with regard to Guideline G, the LSO stated that it was relying upon the March 2017 written evaluation by the DOE psychologist. The LSO stated that the DOE psychologist had concluded that the individual met the diagnostic criteria for Alcohol Abuse set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*, without adequate evidence of rehabilitation or reformation.

IV. Findings of Facts

In late May 2016, the individual was arrested and charged with Aggravated Assault Against a Household Member with a deadly weapon. Ex. 7 at 2-3. The individual's wife stated that following an argument regarding his alcohol consumption, the individual became upset, hit her in the face with a bowl, and then went to the kitchen to retrieve a knife, stating that he was going to "cut [her] throat." The wife asserted that she ran outside, and the individual went after her, grabbed her by the hair, and struggled with her until she was able to break free and get to safety. Ex. 9 at 5-6. As a result of the incident, the individual pled no contest to Disorderly Conduct. Ex. 6 at 2.

In June 2016, following the arrest, the occupational medicine (OM) division of the individual's employer conducted an alcohol screening test, the Alcohol Use Disorder Identification Test, which indicated that the individual was a "risky drinker or drinking at hazardous levels." Ex. 4 at 20. As a result, the employer assigned him a Medical Evaluation for Work team. *Id.* at 21. The team determined that the individual should be required to participate in an intensive outpatient program (IOP) and an anger management education program. *Id.* The individual was also required to completely abstain from alcohol and participate in daily alcohol testing. *Id.*

In August 2016, the LSO summoned the individual for a PSI. Ex. 23. During the PSI, the individual denied that he assaulted his wife in any way, but he admitted that he had been consuming alcohol, approximately three to four beers, and his wife was upset that he was drinking. *Id.* at 14, 19-20. The individual additionally confirmed that he had three arrests from the 1980s to 1992 involving alcohol and the operation of a motor vehicle. *Id.* at 42. The individual stated that following the 1992 arrest, he abstained from alcohol for approximately sixteen years until he

decided to consume alcohol on his fiftieth birthday. *Id.* at 42. Following his birthday, he began to consume alcohol again for approximately eight years, with the exception of nine months when he was trying to lose weight. *Id.* at 42, 46. The individual clarified that the last time he consumed alcohol was one month prior to the PSI, on his birthday. *Id.* at 47.

Following the PSI, the LSO referred the individual to the DOE psychologist for evaluation. The evaluation took place in March 2017. Ex. 4. The psychologist noted that he spoke to the OM division of the individual's employer about the individual. Ex. 4 at 8. OM reported that approximately a month after the employer implemented daily alcohol testing, one of his tests indicated "heavy drinking within the last four days." *Id.* The individual reported that he consumed three to four beers three days prior, on his birthday. *Id.* Following this test, OM conducted additional laboratory tests that indicated "liver damage due to excessive alcohol use." *Id.* at 9. The individual claimed he had only been consuming one six-pack per month, and no more than three beers on any one occasion; however, the psychologist noted that the liver results were inconsistent with the limited amount the individual claimed he had been consuming. *Id.* Further, the individual informed the psychologist that after he learned that "his drinking could be discovered,... he had not consumed alcohol" since his birthday. *Id.* at 8.

The individual reported to the psychologist that he had completed a twenty-three week intensive outpatient alcohol program and a sixteen-week anger management program as had been required by his employer. *Id.* at 9. The psychologist also conducted the same laboratory tests previously completed by OM, and all of these tests came back negative for alcohol and within a normal range on the liver test. *Id.* at 10. The psychologist noted that the return to normal ranges after the individual stopped consuming alcohol following his birthday is "further evidence that his liver enzymes were abnormal due to heavy alcohol consumption." *Id.* at 11. The psychologist additionally stated that it was "problematic that [the individual] minimized and chose to agree to, but then not abide by [OM's] requirement that he become alcohol abstinent." *Id.*

Ultimately, the psychologist concluded that alcohol likely played a role in his behavior on the day of his May 2016 arrest, indicating "poor and possibly dangerous judgment due to his use of alcohol." *Id.* The psychologist noted that the individual did not "technically qualify" for a DSM-IV diagnosis of Alcohol Abuse due to the lack of evidence that the aggressive behavior was recurrent. *Id.* However, because the individual used alcohol to the extent of causing possible alcohol-induced liver damage, failed to be candid about his alcohol use, failed to abide by OM's abstinence requirement, and engaged in behavior that resulted in a serious legal charge, the psychologist determined that the individual warranted a diagnosis of Alcohol Abuse without adequate evidence of rehabilitation. *Id.* at 11-12. The psychologist noted that the individual did not appear to be committed to abstaining from alcohol; however, he suggested that the individual attend an intensive outpatient program at least six hours per week on at least three different nights, attend and participate in alcohol abuse meetings such as Alcoholics Anonymous (AA) at least three times per week, and permanently abstain from the consumption of alcohol. *Id.* at 13.

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 not be restored. 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.

At the hearing, the individual testified that from July of 2016 to early July 2017, he abstained from consuming alcohol. Tr. at 17, 28. He stated that he completed a nine-month anger management program and an eight-to-nine month alcohol treatment program that occurred one time per week for two hours. *Id.* at 20, 23, 27. The individual indicated that he learned how alcohol affects a person's body, mood, and thinking, and how it relates to health and decision-making. *Id.* at 24. However, the individual admitted that he had only attended approximately six AA meetings in the last year. *Id.* at 26.

Approximately two weeks prior to the administrative hearing on this matter, the individual consumed four beers on his birthday because he "felt like it." *Id.* at 26, 28-29. The individual clarified that, in spite of his extended abstinence and the upcoming hearing, he did not think he should abstain from consuming alcohol because he did not think alcohol was a problem in his life. *Id.* at 29-30. Additionally, the individual testified that his "mind-set towards drinking is that [he does not] need it so why do it." *Id.* at 18.

With regard to his current marital relationship, the individual stated that he no longer lives with his wife, but resides in a trailer on his daughter's property. *Id.* Nonetheless, he stated that he and his wife are still married. *Id.* at 19. He further indicated that while he has no intention of getting a divorce, he does not intend to resume living with his wife. *Id.*

To provide character testimony, the individual called his supervisor to testify. *Id.* at 11. The supervisor stated that he has known the individual approximately two-to-three years and interacts with him several times per week. *Id.* at 11, 13. The supervisor further testified that he has never been concerned about the individual's alcohol consumption, the individual has never reported to work intoxicated, and the individual has never displayed any behaviors to indicate he has a problem with alcohol. *Id.* at 12-13. While the supervisor indicated that he has never spoken with the individual regarding his alcohol use, the supervisor believed him to be honest, trustworthy, and forthright. *Id.* at 13-14.

The final witness was the DOE psychologist. *Id.* at 31. He opined that when these administrative proceedings concluded, the individual would "continue to...drink rather heavily." *Id.* While the psychologist noted that he did not have a concern that the individual would report to work under the influence of alcohol, the individual has a "drinking problem that can cause serious problems outside of work." *Id.* at 32. The psychologist also stated that the individual cannot be trusted to control his alcohol consumption or abide by the alcohol restrictions put in place by his employer as he admitted to consuming alcohol even when the restrictions were in place. *Id.* at 33. The psychologist clarified that the individual has a "strong sense that he should run his own life and that other people should stay out of it." *Id.* at 34. Even though the individual has received education about alcohol induced problems, the psychologist additionally opined that the knowledge did not "matter a whole lot to him." *Id.*

When questioned about the portion of his psychological evaluation stating that the individual did not technically qualify for a diagnosis of Alcohol Abuse, the psychologist clarified that he was using his clinical judgment in making the diagnosis and pointed to the “four problems” outlined in his report: (1) the individual continuing to use alcohol when he had been told he should abstain or cut down; (2) the individual needing or wanting to drink to the degree that he obscures it from others, primarily OM; (3) the severity of the legal charge that resulted after the individual had been drinking; and (4) the individual’s impaired judgment. *Id.* at 36-37, 39. The psychologist explained that these factors qualify the individual for a diagnosis, and he noted that the individual still warrants a diagnosis of Alcohol Abuse. *Id.* at 33, 37.

A. Guideline G

Alcohol-related incidents away from the workplace, such as driving while under the influence, fighting, spouse abuse, or disturbing the peace can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline G at ¶ 22(a). Furthermore, a diagnosis by a duly qualified medical professional of Alcohol Abuse can raise a security concern and serve as a disqualifier. *See id.* at ¶ 22(d). Here, the individual has been diagnosed with Alcohol Abuse by a psychologist, a diagnosis that remains even after the psychologist heard the testimony presented at the hearing. Further, the individual has a lengthy history of operating a motor vehicle while under the influence of or while consuming alcohol. Additionally, he was recently arrested and pled no contest to Disorderly Conduct, resulting from allegations by his wife that he became violent with her after consuming alcohol.

While the individual enrolled in and completed an intensive outpatient alcohol program and agreed to remain abstinent pursuant to his employer’s requirements, he did not show a commitment to changing his behaviors to establish that these alcohol-related incidents are unlikely to recur. *See id.* at ¶ 23(a). In fact, the individual admitted that he consumed alcohol, and he tested positive for alcohol during the restriction period established by his employer. Ex. 4 at 8. He also admitted that he only decided to remain abstinent once he discovered his alcohol use could be detected. *Id.* Furthermore, in spite of the psychologist’s recommendations that the individual attend AA meetings at least three times per week and permanently abstain from alcohol, the individual testified that he has only attended six AA meetings in the last year and consumed four beers approximately two weeks prior to the hearing on this matter. Tr. at 26-27. For these reasons, I conclude that the security concerns under Guideline G have not been sufficiently mitigated.

B. Guideline J

The commission of a single serious crime or multiple lesser offenses can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline J at ¶ 31(a). Furthermore, an admission or allegation of criminal conduct, regardless of whether the person was formally charged, prosecuted, or convicted, can also raise security concerns and serve as a disqualifier. *See id.* at ¶ 31(c). Here the individual was arrested and charged with DUI on one occasion and DWI on two separate occasions. Furthermore, the individual was alleged to have committed and was charged with Aggravated Assault with a deadly weapon, but ultimately pled no contest to Disorderly Conduct. All of the incidents involved the individual's poor judgment due to his consumption of alcohol.

These security concerns can be mitigated if there is evidence of successful rehabilitation, such as the passage of time without the recurrence of criminal activity, remorse, or education. *See id.* at ¶ 32(d). While the individual's DUI and DWIs occurred over a decade ago, the individual is not only still consuming alcohol but is continuing to exercise poor judgment due to his alcohol consumption, such as the recent incident with his wife. Furthermore, in spite of this history and his completion of an intensive outpatient alcohol program, learning "quite a bit" about how alcohol affects the decisions a person makes, the individual still chooses to consume alcohol because he "fe[els] like it" and does not think that alcohol is a problem in his life. Tr. at 24, 29-30. Because the individual shows a lengthy pattern of criminal conduct, all related to his consumption of alcohol, fails to recognize the negative effects of alcohol with regard to his judgment, and continues to consume alcohol, I determine that the security concerns under Guideline J have not been sufficiently mitigated.

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 or J. 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 find that the individual has not brought forth sufficient evidence to resolve the security concerns associated with these guidelines. I therefore cannot 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 not restore the individual's access authorization.

Janet R.H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: August 8, 2017