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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 17, 2017	)	Case No.: PSH-17-0034
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Issued: August 24, 2017

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 November 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 incidents 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 January 2017 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Dependence without Physiological Dependence in Early Full Remission. The DOE psychologist further concluded that the individual has a long history of habitual and binge consumption of alcohol to high levels of

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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.

intoxication. He further concluded that these conditions can cause significant impairment to the individual's judgement and reliability.

In April 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) 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**

To support its concerns under Guideline G, the LSO cites the DOE psychologist's diagnosis of Alcohol Dependence, the individual's alcohol use, and two alcohol-related incidents of the individual. *See* Ex. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Guideline G. 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* Guideline G.

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

The individual has acknowledged a long history of alcohol abuse. He has been involved in two alcohol-related incidents, as cited by the LSO. Ex. 1 and 3. On August 11, 1999, he was arrested and charged with Driving Under the Influence. The individual admitted to consuming eight to ten beers prior to his arrest. *Id.* In addition, his blood alcohol content registered .16. *Id.* On August 10, 2016, the individual was issued a notice of trespass and asked not to return to a public venue. *Id.* The individual admitted that he had blacked out while at the public venue after consuming one pint of vodka in 10 to 15 minutes. *Id.*

During the course of his November 2016 PSI, the individual discussed his past and current alcohol use. *Id.* He admitted that over the previous six months, he had consumed a whole bottle of vodka in two hours on five different occasions. *Id.* He also admitted that for the previous three years, he had experienced an alcohol-related blackout once a year. *Id.* The individual further admitted that on six occasions in a six-month period in 2016, he consumed up to a half pint of alcohol in the parking lot of a library before driving home. *Id.* He also admitted that his wife and a friend had expressed concerns regarding his alcohol use and that he had hidden his drinking from his wife. *Id.* Finally, during his PSI, the individual acknowledged that he has a drinking problem and that he is an alcoholic. *Id.*

Based on this information, the individual was referred to the DOE psychologist for a psychological evaluation. On January 20, 2017, 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 Dependence without Physiological Dependence in Early Full Remission, without adequate evidence of rehabilitation or reformation. Ex. 5 at 13. The DOE psychologist also concluded that the individual has a long history of habitual and binge consumption of alcohol to high levels of intoxication. *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 Dependence. 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 August 2016 alcohol-related incident. Transcript of Hearing (Tr.) at 33. He testified that he was in denial about his alcohol use and that the August 2016 alcohol-related incident was a wake-up call for him. *Id.* The individual stated that before this incident he was in a "deep hole" and suffering from depression. He testified that he believes he drank alcohol to feel better. *Id.* at 34. He began meeting with a psychiatrist in March 2017 to treat his depression and is now taking antidepressants. *Id.* at 43. The individual testified that he no longer feels "miserable" and no longer has the urge to drink. *Id.* at 38. He further testified that his health has improved, noting that he has lost 40 pounds and no longer has to take blood pressure medication. The individual stated that he has never taken antidepressants in the past and that he feels significantly better. *Id.* at 46 and 47.

According to the individual, reading the DOE psychologist's report was another wake-up call for him. He testified that he has been attending Alcoholics Anonymous (AA) once a week since February 1, 2017, has been meeting with a therapist since May 3, 2017, and has not drunk any alcohol for eleven months. *Id.* at 40. The individual testified that he now understands his alcohol problem and believes that his depression was a trigger to his drinking. He stated that he has the support of his wife, sister and AA. Finally, the individual stated that his future intention is to completely abstain from alcohol. *Id.* at 50.

During the hearing, the individual also offered the testimony of his therapist, his psychiatrist and his AA sponsor. His therapist testified that she has been counseling the individual for his depression and alcohol use disorder since May 2017, noting that he has attended nine counseling

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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.

sessions thus far. *Id.* at 24. She stated that she believes the individual now understands the root causes for his depression and is making reasonable progress. *Id.* at 25 and 26. The therapist further testified that the individual's alcohol use disorder appears to be in remission. *Id.* She opined that the individual seems to have a good outlook on what it takes to remain sober. *Id.* at 27.

The individual's psychiatrist testified that he was referred to the individual by his wife and has met with the individual for four sessions. *Id.* at 55. He stated that he is treating the individual for major depressive disorder, noting that the individual's depressive symptoms began in childhood. *Id.* The psychiatrist noted that the individual came to him quite depressed. *Id.* at 56. He stated that the individual's drinking made his depression worse, noting that the individual's depression preceded his alcohol use. *Id.* According to the psychiatrist, the individual is doing well as he has had a good response to antidepressants and is fully engaged in therapy. *Id.* at 57. He opined that the individual's depression is now generally controlled and stated that if the individual can keep his depression controlled, he will stay away from drinking. *Id.* at 58. The psychiatrist testified that the individual is developing the tools to deal with stress and does not have cravings for alcohol. He further testified that the individual is motivated to stay sober. *Id.* at 59. He stated that he believes the individual's prognosis is very good. In addition, the psychiatrist stated that he will continue to meet with the individual once a month until his depression is completely in remission. *Id.* at 61. Finally, the individual's AA sponsor testified that he has sponsored the individual for about four months and meets with him once a week. He stated that the individual is working on Step 10 of AA's 12-step program. *Id.* at 13. The AA sponsor believes the individual is sincere and wants to remain sober. *Id.* at 17.

After listening to all of the testimony at the hearing before testifying himself, the DOE psychologist opined that he does not have a great deal of confidence that the individual can remain abstinent. *Id.* at 64. He explained that the individual is an "unusual man" who has used substances, including alcohol, most of his adult life. *Id.* Although the DOE psychologist believes the individual has an understanding that he cannot drink alcohol, he does not believe the individual has presented strong evidence that he will remain sober, despite his current abstinence of eleven months. *Id.* at 65 and 66. He further testified that given the individual's long-standing personality tendencies and addictive behavior, rehabilitation is still very new for him. Moreover, the DOE psychologist testified that much of what the individual's witnesses said about him was very generalized. *Id.* at 66. He noted that the individual's sponsor did not know how long the individual had been abstinent or how many meetings he had attended. *Id.* at 66 and 67.

The DOE psychologist was also concerned that the individual did not follow a number of his recommendations, although he noted that the individual may have had realistic constraints at the time. *Id.* at 67. He testified that the individual did not follow his recommendation to have two or three drug tests to establish that he was truly not drinking over a period of time, noting that he would like to see these drug tests continue for at least another six months. *Id.* at 67 and 74. In addition, the DOE psychologist noted that the individual did not participate in an Intensive Outpatient Program nor has he attended AA at least three times a week as recommended. *Id.* at 68 and 70. He also noted that the individual's therapist focuses on a cognitive behavioral therapy style, and did not seem focused on the individual's genetic predisposition towards depression. *Id.* at 68. The DOE psychologist testified that this is an important factor in the individual's recovery process because "if [the individual] ignore[s] that kind of inbred wish to drink, [he] can get a false

confidence...in his stability and how strong he can be in turning away from alcohol.” *Id.* Finally, the DOE psychologist opined that overall the individual has a moderate chance of remaining abstinent, noting that the individual’s treatment really only began in March 2017, with the first contact with his psychiatrist, and then in May 2017, with the individual’s contact with his therapist. *Id.* at 70. He noted that neither one of those relationships have been established for a long period of time. *Id.* The DOE psychologist testified that he would like to see the individual’s therapist work more on the individual’s triggers and coping techniques, and see his psychiatrist feel more confident that his depressive symptoms are remitted.

## **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 he does not have a high degree of confidence that the individual will maintain abstinence, and that the individual has not yet achieved adequate rehabilitation and reformation at this time.

Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns regarding 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 in accordance with the recommendations made by the DOE psychologist, having only met with his therapist and psychiatrist for three or four months as of the date of the hearing; (3) although the individual is currently participating in counseling sessions with his therapist and is making progress, 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, in light of the individual’s relatively recent recovery efforts, the individual has only a moderate chance of success of remaining completely abstinent at this time. *Id.*

For these reasons, I find that the individual has not sufficiently resolved the DOE’s security concerns under Guideline G.

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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>.

## **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. 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 Guideline G. 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 24, 2017