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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 23, 2017)	Case No.:	PSH-17-0036
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_____)		

Issued: September 6, 2017

Administrative Judge Decision

Janet R.H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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. In order to address those concerns, the LSO summoned the individual for a Personnel Security Interview (PSI) in November 2016. Following the November 2016 PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychologist in February 2017.

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 I (psychological conditions) 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 eight exhibits (Exhibits 1-8) into the record. The individual tendered 22 exhibits (Exhibits A-V). 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 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 I of the Adjudicative Guidelines, which relates to security risks arising from alcohol consumption and psychological conditions 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. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27.

In citing Guidelines G and I, the LSO asserted that: (1) the individual admitted that for six years prior to the PSI he had consumed three to seventeen beers on a daily basis and became intoxicated once a week; (2) the DOE psychologist concluded that the individual met the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition Text Revisions (DSM IV-TR)* criteria for Alcohol-Related Disorder, Not Otherwise Specified, without evidence of rehabilitation; and (3) the DOE psychologist also concluded that the individual met the *DSM IV-TR* criteria for Impulse-Control Disorder, Not Otherwise Specified, and the *Diagnostic Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)*, criteria for Other Specified Disruptive, Impulse-Control, or Conduct Disorder.³

IV. Findings of Facts and Hearing Testimony

During a routine reinvestigation for the individual's security clearance, information arose that caused the LSO to interview the individual. Ex. 7 at 10. During the PSI, the individual admitted that he was consuming three to seventeen beers on a daily basis and that he became intoxicated once a week. Ex. 7 at 136, 171-77. Following the PSI, the LSO referred the individual to the DOE psychologist for evaluation. The evaluation took place in February 2017. The DOE psychologist concluded that the individual suffered from Alcohol-Related Disorder, Not Otherwise Specified, and Impulse-Control Disorder, Not Otherwise Specified. Ex. 5 at 9.

At the hearing, the individual testified that his alcohol consumption had become a habit. Tr. at 98. He continued that after his interview with the DOE psychologist, he quit consuming alcohol for about a month with no withdrawal symptoms. Tr. at 110. The individual stated that, when he resumed alcohol consumption, he was consuming no more alcohol than the amount suggested in the DOE psychologist's report.⁴ Tr. at 110, 113. He testified that he is presently consuming alcohol, but not every day. Tr. at 114.

The individual also testified that, since May 2017, he has been attending Alcoholics Anonymous (AA) at least five times per week. Tr. at 113, 122. He testified that he admires the courage of the other people who attend AA, and stated that he has found it beneficial. Tr. at 116, 121. He further

³ I will refer to both the diagnoses as Impulse-Control Disorder.

⁴ The report states that the individual should limit his consumption to within the National Institutes of Health guidelines which are "no more than three drinks per day, and no more than 14 drinks per week." Ex. 5 at 10.

asserted that he does not intend to get a sponsor or go through the steps, but expects to attend AA meetings once a week in the future, stating that “[i]t almost gets to be a little family there.” Tr. at 119-20, 121, 123. The individual also stated that he believes that he can handle his alcohol consumption responsibly in the future. Tr. at 120. The individual declared that he attends therapy sessions with a physician and his counselor, which he finds beneficial. Tr. at 124, 138, 145. In addition, he stated that he took online anger management classes prior to treatment and learned a great deal from those classes, including that keeping an “anger journal” was helpful. Tr. at 141-43; Exs. A-D.

The DOE psychologist testified that the individual’s current treatment program is “great.” Tr. at 165. She testified that she was impressed that the individual has independently pursued therapy and investigated continuing treatment with no supervision. Tr. at 165. However, the DOE psychologist opined that the individual is not yet rehabilitated or reformed. Tr. at 166. Further, she asserted that he needs to continue either individual counseling or AA for a period of one year from March 2017. Tr. at 166. The DOE psychologist affirmed that the individual needs to continue consuming alcohol at the moderate level he testified that he has been consuming since March, which is an appropriate level of alcohol consumption. Tr. at 166-67.

As for the individual’s Impulse-Control Disorder diagnosis, the DOE psychologist stated that there were several incidents in his past that led her to that diagnosis. Tr. at 168. She testified that she was impressed with his online self-study and his “anger journal,” Tr. at 169, 178, and she confirmed that his once a week counseling was appropriate. Tr. at 171. She articulated that the individual could continue counseling for six months to be considered rehabilitated or reformed from the Impulse-Control Disorder diagnosis. Tr. at 171. The DOE psychologist concluded that the individual’s two therapies, for alcohol and the Impulse-Control Disorder, are working well together. She asserted that “alcohol can have an impact on your ability to control your impulses. I think that’s definitely true. And I think that [the individual] is working on both of them at the same time is much better than if he was only working on one and not the other.” Tr. at 174. She also indicated that working on both together increased the likelihood of a favorable prognosis. Tr. at 174.

Two of the individual’s co-workers testified that the individual is meticulous. Tr. at 13, 54. They both also stated that, although they had heard him raise his voice to another employee, they had never seen a physical altercation. Tr. at 13, 56. Both co-workers also testified that the individual shared with them that the issues involved in the hearing revolved around his excess alcohol consumption and his anger management issues. Tr. at 15, 59. They both stated that they had never seen the individual intoxicated at work or in a “hangover” condition. Tr. at 14, 61-62.

The individual’s live-in girlfriend testified that the individual is attending counseling and AA meetings. Tr. at 81. Further, she testified that he completed online anger management classes, from which they have both learned enormously. Tr. at 83. She also testified that she has never seen him in a physical altercation with anyone, but prior to his treatment they had “little spats.” Tr. at 84. The girlfriend stated that the individual is happier and engaging in activities that he had decreased his participation in previously. Tr. at 82. She concluded that the individual has expressed to her that he does not want to consume alcohol in the amounts he previously consumed because it “interfered with his life’s goals.” Tr. at 86.

The individual's counselor testified that the individual was "already doing well" when he first came to counseling. Tr. at 35. The counselor stated that the individual presents his own anger journals and the work that he has been doing for anger management. Tr. at 28. She opined that he is very self-aware of where anger comes from and why he does it, Tr. at 29, and that he is aware that alcohol consumption can exacerbate his anger. Tr. at 31.

Finally, the chair of the AA meetings that the individual attends testified, stating that the individual has been attending for "many months." Tr. at 39. He concluded that the individual seems very dedicated to AA, continuing that "he's very dedicated at the meetings to listening and contributing." Tr. at 40, 44.

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.

A. Guideline G

Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, can raise security concerns. *See* Guideline G at ¶ 22(c). Here, the individual has been diagnosed with habitual or binge consumption of alcohol by a psychologist, a diagnosis that remains even after the psychologist heard the testimony presented at the hearing.

Conditions that could mitigate this security concern include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and

established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

See id. at ¶ 23.

While the individual has been seeing a physician and a counselor, and attending regular AA meetings, he had only been in treatment for four months as of the time of the hearing. *See id.* at ¶ 23(a), (d). The DOE psychologist opined that although the individual's treatment program is "great" and his current alcohol consumption is appropriate, he has not been in treatment a sufficient amount of time to be considered rehabilitated or reformed. At the time of the hearing, the individual had not been consuming alcohol responsibly for a long enough period to establish a pattern of responsible use. *See id.* at ¶ 23(b). For these reasons, I conclude that the security concerns under Guideline G have not been sufficiently mitigated.

B. Guideline I

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness and can raise security concerns. *See* Guideline I at ¶ 27. Here, the individual was diagnosed by the DOE psychologist as suffering from an Impulse-Control Disorder, Not Otherwise Specified. *See id.* at 28(b).

Conditions that could mitigate this security concern include, *inter alia*:

- (e) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (f) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation

See id. at ¶ 29(a)-(c). While the individual is currently receiving treatment, which he initiated independently, his treatment started within two months of the hearing. *See id.* at ¶ 29(c); Exs. A-D. The individual has had six anger management counseling sessions, and has completed online anger management classes. Due to the brief amount of time of the individual's treatment, the DOE psychologist opined that he is not yet rehabilitated or reformed. She stated that she would suggest a minimum of six months of therapy before finding the individual rehabilitated or reformed. For these reasons, I conclude that the security concerns under Guideline I 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 and I. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of 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: September 6, 2017