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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 13, 2018) Case No.: PSH-18-0033
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Issued: July 17, 2018

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (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 that requires him to hold a DOE security clearance. In August 2017, the individual submitted to a random breathalyzer test at work. Ex. 12 at 8. The test showed that he had a Blood Alcohol Content (BAC) of .026. Ex. 12 at 9. A second test, administered about 20 minutes later, showed that his BAC was .023. Ex. 12 at 9. Both BAC levels exceeded the allowed limit and the individual was placed on administrative leave. Ex. 12 at 15. Subsequently, the local security office (LSO) held a Personnel Security Interview (PSI) with the individual in October 2017. Ex. 12. In response to information gathered at the PSI, a DOE consulting psychologist (DOE psychologist) evaluated the individual. Ex. 9.

Because the individual’s behavior raised security concerns that were not allayed by the PSI or the psychologist’s report, the LSO informed the individual, in a Notification Letter dated February 21, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter,

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.

the LSO explained that the derogatory information raised security concerns under “Guideline G: Alcohol Consumption” of the Adjudicative Guidelines (Guideline G). Ex. 1. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The individual requested a hearing and the LSO forwarded the individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on April 16, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the individual presented the testimony of four witnesses—his counselor, his wife, his colleague, and his manager—and also testified himself. The LSO presented the testimony of the DOE psychologist who had evaluated the individual. *See* Transcript of Hearing, Case No. PSH-18-0033 (hereinafter cited as “Tr.”). The LSO submitted 13 exhibits, marked as Exhibits 1 through 13 (hereinafter cited as “Ex.”). The individual submitted one exhibit, marked as Exhibit A.

II. The Notification Letter and the Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G 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.” Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon the DOE psychologist’s December 2017 conclusion that the individual was suffering from Alcohol Use Disorder, Moderate. Ex. 1. Additionally, the LSO cited: the individual’s BAC of .023–.026 while at work in August 2017; the individual’s citation for driving with an open container in 2005; and the individual’s charge of Driving While Ability Impaired in 1994. Ex. 1 at 1. The LSO noted that the individual admitted during an October 2017 PSI that he had been consuming 30-40 beers per week between 2015 and 2017. Accordingly, the LSO’s security concerns under Guideline G are justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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). 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 granting or restoring 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.

IV. Findings of Fact

At the hearing, I took testimony from the individual, his counselor, his wife, a current colleague, his current manager, and the DOE psychologist.

The individual’s counselor testified that, when the individual came to her in August 2017 for issues with his alcohol consumption, she referred him to an Intensive Outpatient Program (IOP), which he successfully completed in October 2017. Tr. at 11. She described the individual as an active participant in group sessions. Tr. at 11. She stated that he had seen her for six individual sessions beyond his IOP and the aftercare he was receiving. Tr. at 11–12. The counselor explained that she diagnosed the individual with Alcohol Use Disorder, Moderate. Tr. at 11. She testified that the individual struggled with remaining abstinent, claiming that the individual reported to her that he had consumed alcohol on a hunting trip in November 2017 and then again on December 1, 2017. Tr. at 12, 13–14. However, the counselor asserted that she still considered his period of abstinence to have begun in August 2017 because his setback was brief and she did not consider it a full relapse. Tr. at 12, 14, 18. She testified that the individual intends to abstain from alcohol completely and permanently and that he had made progress toward that goal. Tr. at 14, 16. The counselor believed that the individual’s prognosis would be good if he adhered to the recommendations his treatment providers made. Tr. at 18.

The individual’s wife testified that, although she had concerns about the individual’s alcohol consumption and its effects on his health, she had never seen the individual intoxicated to the point of slurred speech or stumbling. Tr. at 23–25. She confirmed December 1, 2017, as the last day that the individual consumed alcohol. Tr. at 24. She testified that the individual did not experience cravings when around others who were consuming alcohol. Tr. at 25. She further testified that this was the first time the individual had tried to abstain from alcohol and that he intends to abstain completely and permanently. Tr. at 25. The individual’s wife stated that she had seen remarkable changes in her husband since he completed the IOP and started attending aftercare and therapy. Tr. at 26. She affirmed that the individual had made progress and that she will always support him. Tr. at 31.

The individual’s colleague testified that he had no concerns with the individual’s prior alcohol consumption and that he had never seen the individual look intoxicated or hungover at work. Tr. at 35–36. He also testified that the individual had not complained of alcohol cravings. Tr. at 40–41. The individual’s manager testified that he had never seen him under the influence of alcohol at work and that the individual had a positive attitude toward his treatment. Tr. at 44–45.

The individual admitted that he had problems with his alcohol consumption. Tr. at 54. He testified about the practical coping skills he was learning to help maintain his sobriety, such as avoiding the people, places, and things around which he used to consume alcohol. Tr. at 55. He testified about

forming new associations, such as attending church and spending more time with his family, to replace the alcohol-related associations he now avoids. Tr. at 55–56. The individual was attending aftercare weekly for support as he continues the daily work of recovery and he stated that he expects to continue with aftercare for the rest of his life. Tr. at 57–58.

The individual testified that, prior to a hunting trip he took in late November 2017, he was not totally abstinent, but only consumed alcohol on weekends. Tr. at 58, 66. He went on the hunting trip as part of a celebration of life for a friend who was terminally ill and, during the trip, he consumed alcohol heavily every night for six nights. Tr. at 58–59. On December 1, 2017, he consumed all or part of three cans of light beer. Ex. 9 at 5; Tr. at 68. The individual testified that he had attended four or five Alcoholics Anonymous (AA) meetings, usually right after his weekly aftercare session, and that he would sit in the back to observe and listen. Tr. at 60–61. He had not yet secured a sponsor. Tr. at 62. He claimed that he has not attended more AA meetings because he has been trying to do “side jobs just to make extra money to pay the bills.” Tr. at 61. He was seeing his counselor monthly and had internalized the risks that alcohol pose to his life, especially the health risks. Tr. at 63–64. The individual testified that he intends to abstain from alcohol completely and permanently. Tr. at 63–64.

The psychologist testified that the individual appeared sincere in his recovery efforts. Tr. at 72. However, he disagreed with the individual’s counselor about the start date of the individual’s abstinence. Tr. at 74. The psychologist testified that the individual needed at least three more months, and preferably six more months, of abstinence to show adequate rehabilitation. Tr. at 73–74. He also reiterated his recommendation that the individual attend two or three AA meetings per week because the support of his peers would be more helpful for maintaining his sobriety than would a singular hour of aftercare once per week. Tr. at 73.

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.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when: (1) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Administrative Guidelines at ¶ 23(a)–(d).

The individual heavily consumed alcohol as recently as November 2017 and, as recently as August 2017, the individual was consuming 30–40 cans of beer per week. This behavior is neither so infrequent nor so far in the past that it is very unlikely that it will recur. Indeed, the individual's most recent binge drinking episode occurred in December 2017 after he finished his IOP. With this recent history in mind, there is still substantial doubt that the individual will not relapse again.

While the individual acknowledged his past, problematic alcohol consumption, he has not maintained his abstinence long enough to demonstrate rehabilitation or reformation. Typically, rehabilitation follows one year of abstinence because that allows an individual to experience all of the ups and downs that occur with holidays, hard times, and seasonal changes. A full year of abstinence allows people in recovery to experience several emotional and situational challenges and overcome them. Just a few weeks after completing his IOP, the individual returned to problematic alcohol consumption because of a friend's terminal illness. Because the individual has not maintained his abstinence through the challenge of a traumatic life event and without the assurances that come with a full year of sobriety, I cannot be sure that he will not relapse the next time he is faced with such a deep loss. Indeed, the individual admitted that he was consuming alcohol even prior to the November hunting trip but after he completed the IOP. Finally, although the individual has no history of relapse prior to 2017,² successfully completed the IOP, and is progressing with his counseling, he has not established a sufficient pattern of abstinence.

The DOE psychologist's opinion that the individual needs six more months to be considered rehabilitated or reformed is crucial to my decision. The DOE psychologist stressed that the individual has a "moderately good prognosis" that would be elevated by attendance at AA, securing a sponsor, and six more months of sobriety. Tr. at 73. Further, the individual's counselor confirmed that the individual has a good prognosis if he "adheres to all of the recommendations that have been made, including AA, sponsorship, [and] continued counseling." Tr. at 18. Due to the individual's lack of time in recovery, I cannot find that he has mitigated the concerns raised by the LSO. For the foregoing reasons, I find that the individual has not resolved the DOE's Guideline G security concerns.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the individual at this time. The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

² The experts in this case disagree over whether the individual relapsed when he consumed alcohol in November and December 2017. Since the outcome of the case will not change if we take one expert's opinion over the other, I am considering the wife's statement that the individual never tried to maintain abstinence before when saying that the individual has not had a previous relapse.

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