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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 24, 2018 ) Case No.: PSH-18-0038  
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Issued: July 26, 2018

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**Administrative Judge Decision**  
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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> 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 an employee with a DOE contractor in a position that requires a security clearance. Ex. 1. In April 2017, the Individual submitted an incident report describing his financial difficulties and his problem with alcohol consumption. Ex. 14. In May 2017, the Individual sat for a Personnel Security Interview (PSI) with the Local Security Office (LSO). Ex. 11. Because one of the LSO’s concerns was alcohol-related, the Individual was referred to a DOE-contractor Psychologist (DOE Psychologist) for an evaluation. Ex. 12.

The Individual’s behavior raised security concerns that were not allayed by the May 2017 PSI or the DOE Psychologist’s evaluation. Therefore, the LSO informed the Individual, in a Notification Letter dated February 22, 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, the LSO explained that the derogatory information raised security concerns under “Guideline F: Financial Considerations” (Guideline F) and “Guideline G: Alcohol

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<sup>1</sup> Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

Consumption” (Guideline G) of the Adjudicative Guidelines. 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 24, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his next-door neighbor, two co-workers, his supervisor, a co-worker who is also a chaplain at his second job, and the DOE Psychologist. See Transcript of Hearing, Case No. PSH-18-0038 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”).

## **II. The Notification Letter and the Associated Security Concerns**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. In the Notification Letter, the LSO alleges, as Guideline F derogatory information, that the Individual has failed to pay or had difficulty paying his bills on time and that he failed to provide DOE with proof of payment or resolution as promised at his May 2017 PSI. Ex., 4 at 1. Guideline F (Financial Considerations) references information indicating that a clearance holder has failed “to live within one’s means, satisfy debts, and meet financial obligations.” Guideline F at ¶ 18. It is well established that failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. *Id.*

The LSO also alleges, as Guideline G derogatory information, that the Individual: (1) has been diagnosed by the DOE Psychologist with Alcohol Use Disorder, Moderate; (2) had been consuming six to eight beers every other day between 2014 and January 2017; (3) sought treatment for alcohol use in January 2017; and (4) currently continues to consume alcohol. Ex. 4 at 1–2. 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.

## **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 restoring 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 restoring 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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

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

In April 2017, the Individual voluntarily submitted an incident report detailing his financial and alcohol problems. Ex. 4 at 1. During the May 2017 PSI, the Individual stated that he submitted the report because he wanted to be forthcoming and honest. Ex. 11 at 6-7. The Individual told the Investigator during the May 2017 PSI that his wife had taken a lower paying job and had been spending their money irresponsibly. Ex. 11 at 8. He stated that she had taken out several pay day loans in his name. Additionally, she purchased a new car, and a new washer and dryer set, all without his knowledge or permission. Ex. 11 at 8, 11, 17. At the time of the May 2017 PSI, he was about one month behind on both his mortgage and truck payments. Ex. 11 at 10-12. The Individual estimated that the totality of outstanding debts and payments was less than \$10,000.00 and that he was trying to set up payments for his outstanding accounts. Ex. 11 at 16. During the May 2017 PSI, the Individual agreed to send in proof of any payment plans he set up. Ex. 11 at 18. He also reported that the financial difficulties had caused significant strain on his marriage and that he and his wife would likely be getting a divorce. Ex. 11 at 13-16.

The Individual further stated during the May 2017 PSI that he had originally turned to alcohol to cope with his financial and marriage difficulties. Ex. 11 at 18-19. He reported that he used to drink six to eight bottles of beer in one sitting “every couple of nights.” Ex. 11 at 19. In 2015, his drinking decreased because his wife began working more and bringing in more money. Ex. 11 at 22. However, the Individual later contradicted that statement by asserting that his pattern of having “six to eight beers a night” ended in February 2017. Ex. 11 at 25. The Individual reported that he currently has one or two beers socially once every couple weeks and one or two beers after mowing the lawn. Ex. 11 at 26–27. He also stated that he had never been diagnosed as having an alcohol-related disorder.

After the May 2017 PSI, the LSO referred the Individual to the DOE Psychologist for an evaluation. Ex. 12. In contrast to the one or two social drinks every couple weeks that he reported in the May 2017 PSI, the Individual reported to the DOE Psychologist at the evaluation that he was drinking twelve beers every other weekend in addition to either three to four beers or two glasses of wine on two or three weeknights every week. Ex. 12 at 5.

The Individual also reported to the DOE Psychologist that he had attended a treatment center (Treatment Center) for his alcohol misuse. In its January 2017 evaluation of the Individual, the Treatment Center had not diagnosed him as suffering from an alcohol problem but concluded that he was “self-medicating” himself in response to stress. Ex. 12 at 5. However, upon the DOE Psychologist’s review of medical records sent by three medical professionals who had previously treated the Individual, the DOE Psychologist learned that the Individual had been, in fact, previously diagnosed with an alcohol use disorder. A psychiatrist (Psychiatrist), who treated the Individual from 1996 to 2009 and from 2012 to 2015, had diagnosed the Individual as suffering from Alcohol Dependence. Ex. 12 at 5. The DOE Psychologist’s evaluative report regarding the Individual states that the Individual requested suggestions regarding alcohol treatment facilities in 2013 but that the Individual did not attend either of the two facilities the psychiatrist recommended. Ex. 12 at 6. A psychologist at the facility (Facility Psychologist) where the Individual is employed conducted three sessions with the Individual in the summer of 2013. Ex. 12 at 6. The Individual’s initial complaint to the Facility Psychologist is described as “drinking too much,” and the treatment prescribed was “drink less alcohol.” Ex. 12 at 6. The Individual saw medical professionals at the Treatment Center from October 2016 to January 2017. Ex. 12 at 6. At that time, the Individual reported consuming six to eight beers every night for the previous year and that he had tried to drink less but was unable to do so. Ex. 12 at 6. The Treatment Center diagnosed the Individual with Alcohol Dependence. Ex. 12 at 6. In 2016, the Individual’s primary care physician (PCP) diagnosed the Individual with Alcohol Abuse and had prescribed the Individual a medication used to decrease alcohol cravings. Ex. 12 at 7.

In his evaluative report, the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, a mental condition that causes or may cause a significant defect in his judgement or reliability. Ex. 12 at 15-16. The DOE Psychologist found inadequate evidence of rehabilitation or reformation because alcohol still plays a regular part in the Individual’s life and he was consuming alcohol episodically in unhealthy amounts. Ex. 12 at 15.<sup>2</sup>

At the hearing, the Individual presented five witnesses, each of whom had known him for at least ten years. Tr. at 9, 24, 35, 44, 52. Two of the witnesses had known him for more than 20 years. Tr. at 11, 52. The Individual’s witnesses testified to his good and honest character and excellent work ethic. Tr. at 9, 26, 35-36, 44-45, 53-54. They all testified that, since his divorce, the Individual has not been experiencing significant stress and has returned to his usual laid back demeanor. Tr. at 16-

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<sup>2</sup> The DOE Psychologist recommended that, to show adequate evidence of rehabilitation, the Individual document the following:

- Abstinence from alcohol for no less than 12 months, with random screenings for alcohol use;
- Weekly engagement in psychological counseling (to include alcohol education) for no less than 6 months with a substance abuse counselor;
- Bi-weekly engagement in psychological counseling for the following 6 months with a substance abuse counselor;
- Compliance with all therapist recommendations, including, if recommended, higher levels of alcohol treatment;
- Attendance at Alcoholics Anonymous (AA) at least once weekly for no less than 12 months—longer if his treatment provider recommends it.

18, 28, 40-41, 45-46, 60. One witness, a certified chaplain, testified that the Individual had come to him for counseling on multiple occasions over the course of his divorce proceedings. Tr. at 60.

The Individual also testified that he now uses a budget application on his phone to manage his finances. Tr. at 72-73. He is current on bankruptcy payments and estimated that his bankruptcy plan will be completed in approximately three years. Tr. at 73. He stressed that he chose a Chapter 13 Bankruptcy because he did not want to shirk his financial obligations. Tr. at 69.

The Individual testified that he currently consumes alcohol one or two times per week with neighbors, drinking no more than two or three beers in a sitting. Tr. at 81-83. He may also have one beer or one glass of wine if he goes out for dinner. Tr. at 81-82. He does not have a regular alcohol treatment counselor, but speaks with an associate pastor at his church, as well as his close friends, when he needs to talk. Tr. at 83-84, 90. The Individual believes that his risky behaviors stemmed from stress caused by his toxic marriage. Tr. at 88. He expressed relief that he had been able to move past that “bad season” in his life and get to a healthy place again. Tr. at 88. He stated that he has a support system and has identified non-alcohol-related activities, such as yard work or “being in nature,” which allow him to cope with stress. Tr. at 90-91, 95. He testified that he takes his prescribed medications as directed and that he did not seek outpatient alcohol treatment in the past because the counselor at the Treatment Center told him that he would be fine once he was out of his toxic relationship. Tr. at 85-88, 96-97. The Individual testified that the medical professionals he had dealt with had said that his alcohol use was simply self-medication because of stress.<sup>3</sup> Tr. at 97.

The DOE Psychologist began her testimony by stating that the Individual did not develop a pattern of drinking to excess until 2013. Tr. at 109. The DOE Psychologist diagnosed him with Alcohol Use Disorder, Moderate. Tr. at 109-10. She testified that the Individual also had an anxiety disorder and that having an anxiety disorder can increase the chance for alcohol relapse. Tr. at 110-11. The DOE Psychologist testified that she found the Individual sincere and motivated, but that, without a year of abstinence from alcohol, he did not meet the criteria for rehabilitation. Tr. at 113, 116. She found that the Individual’s counseling with his pastor constituted an effort toward reformation. Tr. at 116-17.

The DOE Psychologist further testified that the Individual’s self-reporting his alcohol use weighed in his favor. Tr. at 128, 130-31. She described the Individual as solid, responsible, dependable, hardworking, and trustworthy. Tr. at 118. She testified that he appears less stressed than when she evaluated him. Tr. at 118-19, 128. Regarding the Individual’s current alcohol consumption habits, the DOE Psychologist testified that, though his consumption falls within recommended guidelines for non-risky drinking, those guidelines are for people who do not have an Alcohol Use Disorder. Tr. at 131. She testified that such a person cannot have a good prognosis without a period of abstinence.

## **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

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<sup>3</sup> This is contradicted by the DOE psychologist’s report regarding the Individual’s medical records. Ex. 12 at 5-7.

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 F**

My examination of the evidence indicates that the Individual has mitigated the security concerns raised by the Guideline F derogatory information. The Individual's financial difficulties began with his wife's over-spending. Since he and his wife are now divorced, such difficulties should also cease. In response to the financial difficulties, the Individual opted for and is adhering to a Chapter 13 Bankruptcy because he wants to pay what he owes. Furthermore, he has established a budget that accounts for the uncertainties in his life, such as paying for childcare when his ex-wife is delinquent on the bill. He has also obtained a second job to bring in more income. I am confident that the Individual will remain in compliance with his bankruptcy payments and that he will continue to follow his budget. Given this information, I find that the Guideline F mitigation factor described in ¶18(d) (good-faith effort to repay debt) is applicable to the Individual.<sup>4</sup> Further, the Individual's efforts to remove the immediate cause of his indebtedness related to his problematic relationship with his now ex-wife and his use of a budget gives me confidence that a pattern of future financial irresponsibility will not reoccur. Accordingly, I find that concerns raised under Guideline F have been sufficiently resolved.

### **B. Guideline G**

After reviewing the evidence, I find that none of the Guideline G mitigation factors are applicable in this case.<sup>5</sup> The Individual testified that he is still consuming alcohol despite the DOE

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<sup>4</sup> Guideline F provides that the following conditions may mitigate security concerns:

- a. the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment;
- b. the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the Individual acted responsibly under the circumstances;
- c. the Individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- d. the Individual initiated and is adhering to a good-faith effort to repay overdue creditors; and
- g. the Individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Guideline F at ¶ 20(a)-(d), (g).

<sup>5</sup> Guideline G provides the following conditions may mitigate security concerns

- 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 judgment;

Psychologist's recommendation that he be abstinent. Further, the DOE Psychologist testified that she could not say that the Individual was rehabilitated because the *Diagnostic and Statistical Manual, 5<sup>th</sup> Edition*, a diagnostic guide for psychological illnesses, requires a full year of abstinence before an individual could be considered as rehabilitated from Alcohol Use Disorder, Moderate. She also testified that she could not say he was reformed because reformation requires an even longer period of sustained change. Tr. at 117. Although the DOE Psychologist's stated that the Individual is presently engaging in alcohol consumption that is generally considered to be "non-risky," she finds that he is not yet rehabilitated or reformed. Accordingly, I find that concerns raised under Guideline G have not been sufficiently resolved to support restoring the Individual's security clearance.

## 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 Guidelines F and G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns with regard to Guideline G. 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.

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- b. the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
  - c. the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
  - d. the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.