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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 11, 2018)
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Case No.: PSH-18-0043

Issued: August 17, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (the Individual) to hold an access authorization under the United States 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."¹ 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 be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The United States Office of Personnel Management (OPM) Federal Investigative Services conducted a background investigation on the Individual which revealed that the Individual had previously failed to report that he had received alcohol-related treatment from April 2013 to June 2013. *See* DOE Ex. 5 at 2. Consequently, the local security office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on November 16, 2017. DOE Ex. 8 at i.

Based upon information provided by the Individual in the PSI, the LSO recommended that the Individual undergo a psychological evaluation. DOE Ex. 4 at 1. A DOE-contractor psychologist (DOE Psychologist) conducted an evaluation of the Individual in early January 2018 (Psychological Evaluation). DOE Ex. 6 at 2.

Because neither the PSI nor the Psychological Evaluation resolved the security concerns raised by the Individual's alcohol-related treatment, the LSO informed the Individual, in a Notification

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

Letter dated April 12, 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 G, Alcohol Consumption” of the Adjudicative Guidelines. DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO introduced nine (9) numbered exhibits (DOE Ex. 1–9) into the record and presented the testimony of the DOE Psychologist. The Individual introduced three (3) lettered exhibits (Individual Ex. A–C) into the record and presented the testimony of eight (8) witnesses, including himself. I received a transcript of the proceedings (Tr.) on August 9, 2018.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as the basis for denying the Individual a security clearance. DOE Ex. 1.

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. The Notification Letter asserted that: the DOE Psychologist diagnosed the Individual with Alcohol-Related Disorder, not yet in Sustained Remission, without adequate evidence of rehabilitation or reformation;² the DOE Psychologist concluded that an alcohol use disorder that is not yet rehabilitated can place judgement at risk; the Individual admitted to regularly drinking to intoxication from 2008 to 2013; the Individual admitted to concealing his alcohol consumption from his wife from 2010 to 2013; the Individual’s family does not offer him alcohol because of his demeanor when he is drunk; and, the Individual consumed two (2) beers per month, and an occasional beer with clients, even though it caused his wife displeasure and he acknowledged that drinking has adverse effects on his health. DOE Ex. 1. The DOE Psychologist’s diagnosis of the Individual with an alcohol-related disorder and the Individual’s consumption of alcohol to the point of impaired judgment justify the LSO’s invocation of Guideline G in the Notification Letter. Guideline G at ¶ 22(d).

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

² The Notification Letter misstated the DOE Psychologist’s diagnosis, which was Alcohol Use Disorder, not yet in Sustained Remission.

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 AND HEARING TESTIMONY

During the PSI, the Individual recounted drinking relatively little alcohol, and very rarely drinking to intoxication, from his youth in the 1980s until 2008, when his wife was diagnosed with a serious medical condition. *Id.* at 24–63. The Individual began drinking to intoxication most Saturday nights from the summer of 2008 until December of 2008. *Id.* at 65. The Individual ascribed this change in his drinking habits to stress related to his wife’s condition and the Individual’s employer laying him off from work. *Id.* at 63–64.

In early 2009, the Individual began to consume a standard bottle of wine in a single sitting at least once per week. *Id.* at 73–75. In 2010, the Individual began consuming a box of wine, equal in size to five (5) standard bottles, nearly every week. *Id.* at 80–82. The Individual admitted during the PSI that he was unable to control the amount of wine he consumed from 2010 to 2013, and was unable to quit drinking despite his desire to do so. *Id.* at 89. The Individual also admitted to hiding his drinking from his wife during this period. *Id.* at 127.

The Individual participated in an Intensive Outpatient Program (IOP) from April 2013 to June 2013. DOE Ex. 8 at 9. The Individual checked himself into the IOP due to his wife’s displeasure with his drinking habits. *Id.* at 13. Although the IOP records indicated that the Individual received treatment for alcohol dependence, the Individual said during the PSI that he could not recall having received such a diagnosis. *Id.* at 23. After the Individual completed the IOP, he attended Alcoholics Anonymous (AA) meetings, with declining frequency, until approximately 2015. *Id.* at 19–20. The Individual stopped attending AA meetings because he perceived the individuals who attended the meetings as physically dependent upon alcohol, which he did not believe to be the case for himself. *Id.* at 20, 118. There is no indication in the record that he drank to excess at any point after late 2016. *See* DOE Ex. 6 at 5.

The Individual suffers from gout which he manages with medication. DOE Ex. 8 at 18. Consuming alcohol aggravates his symptoms, and causes him to experience pain. *Id.* The Individual stated during the PSI that his wife does not like it when he drinks. *Id.* at 100. However, the Individual stated that he still drank on occasion with business clients because it is important in cultivating relationships and because admitting to clients that he was an alcoholic would harm him professionally. *Id.* at 97–100. Further, he stated that he believed that he could control his drinking. *Id.*

The Individual admitted during the PSI that his demeanor becomes unpleasant when he drinks to intoxication. DOE Ex. 8 at 69–70, 77, 88, 117. According to the Individual, his family no longer offers him alcohol at family gatherings because of his unpleasant behavior when he consumes alcohol to excess. *Id.* at 117.

The DOE Psychologist conducted a psychological evaluation of the Individual in early January 2018. DOE Ex. 6 at 2. The DOE Psychologist concluded that, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth (DSM-5)*, the Individual met the criteria for Alcohol Use Disorder, not yet in Sustained Remission, without adequate evidence of rehabilitation or reformation. *Id.* at 13–14. The DOE Psychologist opined that this disorder “can place judgment at risk [because] [t]he disorder carries the risk of intoxication, which by its very nature compromises one’s ability to think clearly, assess potential consequences[,] and make choices based on those assessments.” *Id.* The DOE Psychologist recommended that the Individual: (a) abstain from alcohol for at least twelve (12) months, documented by random blood alcohol content screenings; (b) attend weekly counseling for at least six (6) months, and as directed by his provider for at least another six (6) months thereafter; (c) document his participation in at least weekly AA meetings for six (6) months, and biweekly for at least six (6) months thereafter; and, (d) pursue other wellness measures, examples of which the DOE Psychologist provided in her report. *Id.* at 14.

At the hearing, the Individual testified that 2013 was the peak of his alcohol consumption, at which time he consumed as much as two (2) bottles of wine in a day on some occasions. Tr. at 124. According to the Individual, his drinking decreased progressively after he participated in the IOP. *Id.* at 130–31. By July 2017, the Individual reported that he had reduced his drinking to one (1) to three (3) beers on one (1) occasion per month at a monthly business function. *Id.* at 133. At the time of the hearing, the Individual reported that he last consumed alcohol on February 6, 2018. *Id.* at 136. In support of this assertion, the Individual offered the results of a laboratory test of his hair for ethyl glucuronide which was negative for ethyl glucuronide, a metabolite of alcohol. Individual Ex. C.

The Individual also testified that he began to attend AA meetings in February 2018, the day after his security clearance was suspended. Tr. at 136. The Individual offered into evidence sign-in forms from AA meetings he attended from February to July 2018, to demonstrate his participation. Individual Ex. A. A friend of the Individual testified at the hearing about his discussions with the Individual concerning the Individual’s attendance at AA meetings, that the Individual had an AA sponsor, and that the Individual told him that the AA meetings helped the Individual maintain sobriety. *Id.* at 63–64.

The Individual’s AA sponsor testified at the hearing, and confirmed the Individual’s attendance at weekly AA meetings. *Id.* at 79–80. The AA sponsor began sponsoring the Individual in March 2018. *Id.* at 68. According to the AA sponsor, the Individual is working on the twelve (12) steps of AA, and is currently on the fourth step. *Id.* at 70. The AA sponsor further testified that he had no reason to believe that the Individual had consumed alcohol during the term of his sponsorship of the Individual. *Id.* at 77.

The Individual also testified at the hearing as to other actions he had taken to improve his wellbeing. According to the Individual, he joined a men's group at his church in the summer of 2017, which provides him with a network of supportive men. *Id.* at 139. Another member of the men's group testified at the hearing and confirmed the Individual's active participation in the group over the past year. *Id.* at 26. The Individual also described how his relationship with his wife improved dramatically over the past year, and how his wife was supporting him in his sobriety. *Id.* at 131–32, 135, 139. The Individual contrasted his wife's current support to that in 2013, when she was not supportive of his participation in AA. *Id.* at 127.

The Individual's wife confirmed the Individual's account of their vastly improved relationship and said that she has complete trust that he will abstain from drinking. *Id.* at 105. The Individual's wife recounted how the Individual started drinking heavily at home, by himself, approximately seven (7) or eight (8) years ago. *Id.* at 96. The Individual's wife reported that the Individual hid his drinking from her, and that she did not know exactly how much he was drinking in the past. *Id.* at 97. After the Individual attended the IOP, his wife perceived a gradual decline in his drinking over the years. *Id.* at 99–100. The Individual's wife testified that the Individual had not consumed alcohol in her presence in the last year, and that she believed he fully stopped drinking in early February 2018. *Id.* at 106–07.

The Individual also reported that he attends weekly counseling for his Alcohol Use Disorder with a psychologist (Individual's Psychologist). *Id.* at 138. The Individual's Psychologist testified that the Individual first met with him for treatment in early May 2018, and that he and the Individual meet weekly for counseling sessions. *Id.* at 168. The Individual's Psychologist testified that he did not disagree with the DOE Psychologist's report. *Id.* at 169. The Individual's Psychologist testified that the Individual's wife and AA sponsor were supportive, and would help the Individual to sustain his abstinence from alcohol. *Id.* at 174. The Individual's Psychologist also testified that he believed that the Individual was appropriately managing his Alcohol Use Disorder, and that the Individual's Alcohol Use Disorder was not currently impairing his judgement or reliability. *Id.* at 176. Provided that the Individual continues to attend AA meetings and counseling, the Individual's Psychologist reported believing the Individual's prognosis to be excellent. *Id.* at 178.

The Individual also described why he believed that he would abstain from alcohol in the future despite continuing to drink after attending the IOP. According to the Individual, he did not think that he was a "true alcoholic" because his drinking was not as severe as other participants in the IOP, and he believed that he could manage his drinking. *Id.* at 127, 140, 144. The Individual testified that he now believes that he is an alcoholic, that he does not intend to ever drink alcohol again, and that his wife, AA sponsor, psychologist, and personal faith will support him in his decision. *Id.* at 140–45.

The DOE Psychologist, after observing the hearing and all testimony offered therein, testified that her opinion was that the Individual was rehabilitated from his Alcohol Use Disorder. *Id.* at 189. The DOE Psychologist noted her previous determination that the Individual was not rehabilitated after the Psychological Evaluation; however, she stated that that determination was based not on excessive alcohol consumption by the Individual, but rather on the facts that the Individual was still drinking despite it causing him physical pain due to his gout and personal strife due to the dissatisfaction of his family. *Id.* at 190–92. The DOE Psychologist cited the Individual's improved

self-awareness, his initiative in pursuing treatment, and his support system as factors likely to help him avoid consuming alcohol in the future. *Id.* at 196–98. Although the Individual had not, as of the date of the hearing, achieved the twelve (12) months of abstinence from alcohol recommended by the DOE Psychologist, the DOE Psychologist testified that she evaluated the Individual’s abstinence in the context of his progressively declining drinking from 2013 to the present. *Id.* at 203–04. In light of the new information provided at the hearing, the DOE Psychologist opined that the Individual’s prognosis was very good. *Id.* at 208–09.

V. ANALYSIS

Guideline G Considerations

The Individual does not contest the accuracy of the information set forth in the Notification Letter. *Id.* at 151. Neither the Individual nor the Individual’s Psychologist contest the DOE Psychologist’s January 2018 diagnosis of the Individual. *Id.* at 145, 169. The DOE Psychologist acknowledged the Individual’s efforts to comply with her treatment recommendations. *Id.* at 200–02. However, the Individual has not yet demonstrated the twelve (12) months of abstinence recommended by the DOE Psychologist in her report. *Id.* at 152. In spite of that fact, the Individual maintains that he has mitigated the security concerns asserted by the LSO.

An individual may mitigate security concerns under Guideline G if he or she “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 [] or responsible use [].” Guideline G at ¶ 23(b). The Individual acknowledged his alcoholism during the hearing, and the DOE Psychologist commended the Individual for his improved self-awareness. *Supra* p. 5. The Individual has followed the treatment recommendations of the DOE Psychologist to overcome his problem, including attending counseling with the Individual’s Psychologist, actively participating in weekly AA meetings, and improving his overall emotional wellness by reinvigorating his relationship with his wife, securing an AA sponsor, and participating in a men’s group he finds supportive. *Supra* pp. 4–5.

Although the Individual has not yet satisfied the twelve (12) months of abstinence from alcohol originally recommended by the DOE Psychologist, the DOE Psychologist opined at the hearing that the Individual’s period of abstinence, combined with his progressively declining drinking since 2013, was adequate for her to deem the Individual rehabilitated in light of the other evidence of the Individual’s rehabilitation. Tr. at 203–08. I find particularly compelling the DOE Psychologist’s testimony wherein she stated, “I credit him for the progress that he made in those years leading up to 2018 when I evaluated him, and that is probably the major reason that I think duration is addressed in this case adequately.” *Id.* at 205. Additionally, some of the factors she relied upon in making her treatment recommendations in the Psychological Evaluation, such as the dissatisfaction of the Individual’s family with his drinking and his drinking despite experiencing physical pain, are no longer extant.

Further, the record shows reduced consumption of alcohol beginning in 2013, followed by a period of abstinence. This progressive improvement over a period of years, which the DOE Psychologist acknowledged as uncommon, establishes a pattern of abstinence and responsible use, as envisioned

by the Guidelines, and convinces me that the Individual is unlikely to return to problem drinking. Accordingly, I find the mitigating factor set forth at paragraph 23(b) of Guideline G applicable in this case.

In light of the Individual's mitigation of the security concerns stemming from his alcohol consumption, and the DOE Psychologist's testimony as to the Individual's "very good" prognosis, I conclude that the Individual has resolved the security concerns set forth in the Notification Letter.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicatory Guidelines. 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 brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals