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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: July 18, 2018) Case No.: PSH-18-0054
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Issued: October 2, 2018

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “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 should be granted access authorization.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In October 2017, the Individual reported that he was arrested and charged with Driving While Intoxicated (DWI). The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual, and based upon information provided by the Individual in the PSI, the LSO referred the Individual for a psychological assessment. A DOE-contractor psychologist (“Psychologist”) conducted an evaluation of the Individual in March 2018.

The Individual’s conduct and the Psychologist’s evaluation raised unresolved security concerns. Therefore, the LSO informed the Individual, in a Notification Letter dated June 13, 2018 (“Notification Letter”), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that

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.

the derogatory information raised security concerns under “Guideline G, Alcohol Consumption,” and “Guideline J, Criminal Conduct.”

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. 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 DOE introduced ten numbered exhibits (Exs. 1–10) into the record and presented the testimony of the Psychologist. The Individual introduced two exhibits (Exs. A and B) into the record and presented the testimony of one witness in addition to his own. The hearing transcript will be cited as “Tr.” followed by the relevant page number.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guidelines G and J as the basis for denying the Individual a security clearance. Guideline G states that “[e]xcessive 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.” Adjudicative Guidelines at ¶ 27. The Summary of Security Concerns contained in the Notification Letter asserted the following: (1) the Psychologist concluded the Individual is a “habitual or binge consumer of alcohol to the point of impaired judgment on a regular basis,” and his alcohol use “can impair his judgment, reliability, or trustworthiness”; (2) the Individual was arrested and charged with DWI in October of 2017 after he failed a breathalyzer test and admitted to consuming twenty beers throughout the day leading up to his arrest; (3) the Individual was charged with DWI in May 2016 after failing a breathalyzer test and admitted to consuming seven beers prior to his arrest; and (4) from 2014 to 2016, the Individual drank to intoxication twenty times a year. Ex. 1 at 1.

Guideline J states that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The Summary of Security Concerns re-asserted the two DWI charges referenced above and also asserted that the Individual (1) violated his probation from his first DWI charge when he received his second DWI charge and (2) consumed alcohol as a minor and drove while intoxicated three to five times between 2014 and 2017. Ex. 1 at 2.

III. REGULATORY STANDARDS

The regulations require 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).

An individual must come forward at the hearing with evidence to convince the DOE that restoring the individual's 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

In May 2016, the Individual was arrested and charged with DWI after he failed a breathalyzer test with Blood Alcohol Content (BAC) readings of .165 and .179. Ex. 9 at 51. The Individual had gone out with some friends after returning from a military deployment. *Id.* at 40. After he consumed approximately seven twelve-ounce beers over a period of two hours, the group decided to go to a bar in a different location, and the Individual decided to drive the group because he was the least intoxicated. *Id.* at 42-43. While driving, the Individual was stopped by a law enforcement officer due to an issue with his license plate. *Id.* at 44. The officer asked the Individual if he had been drinking, and he replied in the affirmative but stated that he had only consumed three beers. *Id.* at 44-45. The Individual was taken to jail and released. *Id.* at 46. After the incident, the Individual wrote a letter to the prosecutor which resulted in the prosecutor offering the Individual the opportunity to complete a Substance Abuse Traffic Prevention Course (SATOP), fifty hours of community service, and two years of probation in exchange for dropping the DWI charge.² *Id.* at 48-50.

In October 2017, while still on probation, the Individual was charged with DWI after he failed another breathalyzer test; this time with a BAC of .21. Ex. 9 at 28. The Individual began to consume alcohol around noon at a party the day before, got into an argument with his girlfriend, went to a friend's house to continue consuming alcohol, moved to consuming additional alcohol at a bar, and then took a ride-sharing service to his girlfriend's house after deciding to go home because he was "a little too drunk for the time." *Id.* at 11, 13, 15, 17, 21. In total, the Individual consumed twenty twelve-ounce beers. *Id.* at 9-16. Once at his girlfriend's house, he found that she had not yet returned and that his phone had died. *Id.* at 21. After debating whether to drive home or sleep at his girlfriend's house, the Individual chose the former; he was on the road for fifteen minutes before he was stopped by a State Trooper for weaving between lanes. *Id.* at 22-23. The State Trooper asked the Individual if he had been drinking, and, as before, the Individual admitted to consuming alcohol and underreported the quantity. *Id.* at 24. After performing field sobriety tests and failing the breathalyzer, the State Trooper gave the Individual a ride home and issued him a citation for DWI. *Id.* at 27-29. The Individual subsequently plead guilty to the charge, and was offered a Suspended Imposition of Sentence so long as he completed twenty hours of community service, participated in a Victim Impact Panel Class, and attended two or three sessions of Alcoholics Anonymous (AA). *Id.* at 32-33. When asked during his PSI about his future plans to avoid driving while intoxicated, the Individual stated that the first DWI charge "hurt at first, but didn't stick . . ." *Id.* at 58. He stated that the second DWI charge "really opened [him] up to see what can happen in [DWI] situations" and changed him and caused him to stop drinking. *Id.*

² The Individual's "probation" was supervised by the prosecutor's office and not the courts. *Id.* at 54.

When questioned during the PSI about past incidents of drinking and driving intoxicated, the Individual admitted that he had driven intoxicated three to five times from 2014 to 2017. *Id.* at 38. He also admitted that he consumed alcohol while underage at age twenty. *Id.* at 59-60. And he admitted that he drank to intoxication twenty times per year, over a three year period from 2014 to 2016, and he would consume ten to eighteen twelve-ounce beers over a four hour period. *Id.* at 68-69, 71-74.

Given that the DOE's security concerns were alcohol related, the Individual was referred to the Psychologist for an evaluation. Ex. 7. During the evaluation, the Individual made several statements that formed the basis of the Psychologist's opinion. The Individual had been meeting with a probation officer bi-weekly and had completed one urine test, which was negative for the presence of alcohol. *Id.* at 6. He believed that he would drink alcohol again in the future. *Id.* at 7. He stated that, in the past, he has consumed six twelve-ounce beers within two hours. *Id.* During weekends at a lake in June, July, and August, he would consume six twelve-ounce beers over eight to nine hours. *Id.* at 7-8. In September and October of 2017, he consumed six beers over two to three hours every other weekend. *Id.* at 8. Finally, while he was serving in the military, he would consume ten to twelve twelve-ounce beers over six hours. *Id.* Based on the above information and the information contained in the PSI, the Psychologist found that the Individual is a habitual or binge consumer of alcohol to the point of impaired judgment without being rehabilitated or reformed, and his use of alcohol can impair his judgment, reliability, or trustworthiness.³ *Id.* at 8-9. The Psychologist recommended that the Individual participate in adult substance abuse group therapy sessions on a weekly basis for at least four months, participate in maintenance or aftercare substance abuse group therapy sessions on at least a monthly basis afterward for a minimum of eight months, and participate in a weekly substance abuse support group (such as AA or a similar organization). *Id.* at 9.

At the hearing, the Individual stated that he had been sober since his most recent DWI. Tr. at 35. He had, therefore, been sober for 321 days.⁴ *Id.* at 69. His sobriety was also required by the terms of his probation, and his probation officer reported that he had been compliant with the terms of his supervision. Ex. B.⁵ The Individual also demonstrated that he had been attending an outpatient treatment program for his alcohol use since April 2018.⁶ Ex. 3 at 29. He had completed a weekly group therapy early recovery program, and he continued to attend a weekly relapse prevention class. Tr. at 36. In addition, the Individual had been participating in another group therapy program analogous to AA, entitled SMART, once monthly for the last four months. *Id.* at 36-37, 45.

The Individual testified that, although he originally intended to drink socially after completing his probation and treatment, he now intends to remain abstinent indefinitely. *Id.* at 29-30. The Individual's testimony regarding his intent to remain abstinent was corroborated by the testimony of his witnesses. *Id.* at 15. The Individual also provided insight into how his thinking has changed through the course of his

³ The Psychologist defined habitual consumption of alcohol to the point of impaired judgment as "use of alcohol more than once a month to [blood alcohol content] levels near or at that of legal intoxication . . . resulting in an individual having impaired judgement" Ex. 7 at 4. The Psychologist defined binge consumption of alcohol as "a pattern of drinking to levels of intoxication by drinking heavy amounts of alcohol in a short time period with the intention of becoming intoxicated or drinking to high levels of intoxication less than once a month, but at least several times a year, that results in impaired judgment." *Id.* at 5.

⁴ This total is based on the Individual's recollection of the date of his second DWI. Tr. at 35. However, the actual date of the DWI is about a week earlier. Ex. 6. This distinction does not alter my findings.

⁵ While the letter did not contain a date, the Individual testified that he received it in late August. Tr. at 55.

⁶ The Individual enrolled in this program after attending two AA meetings. Tr. at 35.

recovery. He explained that he did not previously understand the type of harm that alcohol could cause. *Id.* at 41. He stated that even if a person abstains for a decade, once they resume alcohol consumption, any issues they had with alcohol will be as severe at that time as they were when they first stopped drinking. *Id.* He testified that he can call the doctor who runs his support group if he is worried that he will relapse. *Id.* at 42. He also testified that his family is very supportive of his remaining abstinent. *Id.* at 49. The Individual has flourished at work and is a full-time student and testified that abstinence from alcohol makes it easier to learn. *Id.* at 58-59.

The Individual spoke at length about the coping skills he is learning and how he is practicing them in his daily life. *Tr.* at 44-48. He stated that he developed tools regarding how to find the right people to spend time with and, as a result, had to “cut out” a lot of his friends. *Id.* at 43-44. He also discovered that one of the reasons he drank was due to anger, and he has developed the ability to cope with his anger in other ways. *Id.* at 44-45. He also indicated that he had learned a lot by hearing the stories of other recovery participants to better understand his situation and the potential consequences of alcohol abuse. *Id.* at 47-49.

In his testimony, the Individual asserted that his criminal conduct had always been linked to his alcohol consumption. *Id.* at 39-40. He also asserted that, since abstaining from alcohol, he had not broken the law. *Id.*

The Psychologist expressed a belief that the Individual “truly has had a change in his thinking and thought patterns” that would “impact his decisions and his behaviors.” *Id.* at 68. He testified that the Individual had complied with the treatment plan laid out in his report; the only additional thing he would like to see would be for the Individual to get a sponsor. *Id.* at 64, 66. The Psychologist testified that the Individual has reformed his behavior and that the concerns in his report are, from a psychological perspective, mitigated. *Id.* 66-67. He specifically noted that his concerns about the Individual’s judgment have been resolved because of the Individual’s new thought process. *Id.* at 67-68. The Psychologist further testified that the Individual is reformed. *Id.* at 66-67, 70.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and his witnesses 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 should be granted a security clearance at this time. I find that granting the individual a security clearance will not endanger the common defense and security, and that it 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 Concerns

Adjudicative Guideline G provides that a disqualifying security concern may be raised by “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.” *Id.* at ¶ 22(c). Adjudicative Guideline G further provides that a security concern may be raised by “alcohol-related incidents away from work, such as driving while under

the influence . . . , regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder." *Id.* at ¶ 22(a). The information contained in the Summary of Security Concerns justified the LSO's invocation of Adjudicative Guideline G.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when: (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;" (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;" and (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." Adjudicative Guidelines at ¶ 23(a)–(c).

The Individual started abstaining from alcohol on the night of his second DWI, and I find that, as of the date of the hearing, he has demonstrated approximately 10 months of abstinence from alcohol. After the second DWI, he proceeded to enter treatment, participating fully and applying his new skills to his life. He recognizes the danger that alcohol abuse poses to his life and has committed to abstinence. Furthermore, the Individual has no history of treatment or relapse, and the Psychologist, his group counselor,⁷ and his probation officer have all spoken to his satisfactory progress in his probation and treatment programs. Further still, the Psychologist testified that the Individual is reformed. The Individual therefore meets the mitigating criteria described in ¶ 23(b) and ¶ 23(c) of the Adjudicative Guidelines. Accordingly, I find that he has mitigated the security concerns under Guideline G.

B. Guideline J Concerns

Under Adjudicative Guideline J, a disqualifying concern may be raised by "(a) [a] pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness"; "(b) [e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted"; and if an "(c) [i]ndividual is currently on parole or probation." Adjudicative Guidelines at ¶ 31 (a), (b), (c). The information contained in the Summary of Security Concerns justified the LSO's invocation of Adjudicative Guideline J.

Guideline J provides that security concerns arising from criminal conduct can be mitigated when, among other criteria, "(a) [s]o much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment" and "(d) [t]here is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement." Adjudicative Guidelines at ¶ 32(a), (d).

⁷ The Individual did not disclose his first DUI to his treatment provider. Tr. at 49-50. However, there is enough evidence to demonstrate rehabilitation nonetheless.

The Individual's criminal conduct is inextricably intertwined with his alcohol use. As he is committed to abstinence and has reformed both his thoughts and behaviors in that regard, the Individual has changed his circumstances such that there is little risk of his engaging in alcohol-induced criminal conduct in the future. *See, e.g., In the Matter of: Personnel Security Hearing*, Case No. PSH-18-0074 (2018) (finding that the individual is unlikely to reengage in criminal conduct as long as he abstains from alcohol because the majority of the individual's prior criminal conduct involved his use of alcohol and the individual reformed his alcohol disorder). The Psychologist testified that the Individual's judgment is greatly improved and the Individual described skills to cope with anger and peer pressure that also demonstrate sound judgment and reliability. Furthermore, the Individual is in total compliance with his probation requirements and has not been involved in criminal conduct since his DWI nearly one year ago. He has maintained appropriate performance at work while attending community college full-time and meeting his treatment obligations. The Individual therefore meets the mitigating criteria described in ¶ 32(a) and ¶ 32(d) of the Adjudicative Guidelines. Accordingly, I find that he has mitigated the security concerns under Guideline J.

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 Guidelines G and J. As stated above, it is the Individual's burden to come forward with evidence to convince me that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 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 and that restoring his access authorization would not endanger the common defense and security of the nation and would be clearly consistent with the national interest. Accordingly, I have determined that the Individual should be granted access authorization.

Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Officer of Hearings and Appeals