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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-18-0056
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Issued: October 4, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

A DOE Contractor employs the Individual in a position that requires him to hold a security clearance. The Individual’s security clearance was suspended after he was arrested for driving under the influence of alcohol. The Local Security Office (LSO) conducted a PSI of the Individual. Because the security concerns were alcohol-related, the LSO referred the Individual to a DOE Psychologist (“the Psychologist”) for evaluation. The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding 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 July 18, 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 and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See*

¹ 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.

Transcript of Hearing, Case No. PSH-18-0056 (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15 (hereinafter cited as “Ex.”). The Individual submitted eight exhibits, marked as Exhibits A through H.

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. That information pertains to Guidelines E, G, and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Guideline E relates to conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations, which raises questions about an Individual’s reliability, trustworthiness and ability to protect classified information. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. Adjudicative Guidelines at ¶ 15. The LSO alleges that the Individual stated in his PSI and his psychiatric evaluation that he had not consumed alcohol since September 2017, while a blood test reflected moderate to heavy alcohol use in January 2017. Ex. 1 at 1.

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 ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are “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). Guideline G further provides that a “diagnosis by a duly qualified medical or mental health professional . . . of [an] alcohol use disorder” “could raise a security concern and may be disqualifying.” *Id.* at ¶ 22(d). The LSO alleges that the Individual was arrested and charged with Driving While Intoxicated (DWI) in 2009 and again in 2017; that the Individual consumed two beers before driving in 2017, despite his stated intent in 2009 to never drink and drive again; and that the Psychologist concluded that the Individual has a history of habitually consuming alcohol to the point of impairment, without evidence of rehabilitation or reformation. Ex. 1 at 1–2.

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. One of the conditions set forth in the Guidelines that could raise a disqualifying security concern is, “evidence (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”. *Id.* at ¶ 31(A). The LSO alleges that the Individual was cited for speeding in 2006 and 2016; that the Individual was arrested and charged with DWI in 2009 and 2017; and that the Individual admitted in his PSI to consuming four beers in violation of this Conditions of Release after his 2017 DUI.

I find that the LSO’s security concerns under Guidelines E, G, and J 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.

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

The Individual was arrested and charged with DWI in September 2017 after consuming four light beers over the course of an hour. Ex. 13 at 20–21, 26–27. Tr. at 61. He told the arresting officer that he had two beers. Ex. 13 at 21. As part of his Conditions of Release from jail, he was to remain abstinent from alcohol. Ex. 13 at 33–34. The Individual admitted at his PSI in November 2017 that he consumed four beers in the week following his arrest, but claimed that he had remained abstinent after that. Ex. 13 at 33, 64. In January 2018, the Individual was evaluated by the Psychologist. Ex. 10. During the evaluation, the Individual stated that he had remained abstinent since September 15, 2017—the same date he had given during his PSI. Ex. 10 at 4. However, medical tests performed the day after his evaluation showed that the Individual had been consuming alcohol within the 30 days before the tests and that his alcohol use was moderate to heavy during that time. Ex. 10 at 6. The Psychologist noted that the Individual had taken several breathalyzer tests at work, all of which had a result of 0.00 Blood Alcohol Content (BAC). Ex. 10 at 7. He also noted, however, that it is possible to consume several drinks in an evening and still have a 0.00 BAC the following morning. Ex. 10 at 7. The Individual, in his letter requesting a hearing, admitted to another relapse in May 2018. Request for Administrative Hearing at 1.

The Individual submitted into the record many test results, including the results of a medical test performed in August 2018, all of which indicate that he has not consumed alcohol recently. Ex. A;

Ex. B; Ex. C. He also submitted records of his attendance at Alcoholics Anonymous (AA) dating back to October 2017. Ex. G; Ex. F.

At the hearing the Individual presented the testimony of his former supervisor, his Employee Assistance Program (EAP) counselor, his AA sponsor, and his counselor.

The former supervisor has known the Individual for about 12 years. Tr. at 22. She had never seen him under the influence at work. *Id.* at 23. She testified that the Individual is very dependable and that she had never noticed any signs that he may have been abusing alcohol. *Id.* at 24.

The EAP counselor had seen the Individual nearly 30 times since his DWI arrest. Tr. at 12. She gave him a good prognosis, stating that the Individual had transformed over time and had started internalizing the skills and knowledge required to remain abstinent. *Id.* at 14, 17.

The Individual's counselor testified that he had been meeting with the Individual regularly since July 2018 and that the Individual had started a substance abuse education class at that time. Tr. at 49–50. The Individual had three sessions remaining of the class. *Id.* at 55. The counselor testified that he would recommend aftercare but that they had not discussed it yet. *Id.* at 50–51. He felt that the Individual was open and honest and was working hard. *Id.* at 53. However, the counselor did not know about the Individual's May relapse. *Id.* at 51–52.

The Individual's AA sponsor testified that the Individual's first few months at AA were difficult. *Id.* at 33–35. He testified that the Individual did not appear to believe he needed to change and was only there to avoid problems with his job. *Id.* at 33. However, around February 2018, the Individual began to take his recovery seriously and began working on the 12 Steps. *Id.* at 33–35. Around that time, the Individual asked this person to be his sponsor. *Id.* The sponsor testified that he works with the Individual on more than just remaining abstinent. *Id.* at 30. They discuss the underlying causes of the Individual's alcohol consumption and triggers that could lead to a relapse. *Id.* at 36. After the Individual's May relapse, the sponsor told him that he should call for support when he is thinking about drinking alcohol. *Id.* at 40–41. The sponsor testified that of all the people he has sponsored, no one has ever called before they relapsed the first time. *Id.* at 44. He testified that the Individual's behavior in that situation was not out of the ordinary for his time in recovery. *Id.* He testified that the Individual has an active approach to AA, participates in service work, and has a strong support system within the program. *Id.* at 31, 37–38. The sponsor testified that he believes that the Individual is sincere in his desire to abstain from alcohol. *Id.* at 44.

The Individual testified that he is committed to living a sober life. Tr. at 68. He spoke about his journey in AA, describing how he did not originally believe he was an alcoholic but came to realize that he had been abusing alcohol for a long time. *Id.* at 65, 79–80. He admitted that he had chosen to drink and drive, despite promising in a 2009 PSI to never do so again. *Id.* at 69. He spoke about his relapses, describing the fear and embarrassment that led him to drink. *Id.* at 62, 64. He spoke about his father's death at the hands of a drunk driver and expressed sincere regret that he had potentially placed others at risk in the same way. *Id.* at 88. He now has a sponsor, strong family and AA support groups, and more education. *Id.* at 76–77, 88–89. He believes that, with the help of these resources, he can change his life. *Id.* at 88–89. He intends to remain abstinent for the rest of his life. *Id.* at 88.

The Psychologist testified that he was concerned about the denial and minimization the Individual has displayed over time. Tr. at 96. He was concerned that the Individual had fewer than six months of sobriety as of the hearing date. *Id.* at 98. He had observed real change in the Individual, but felt that it was premature to say he is rehabilitated. *Id.* at 96–97. He also expressed concern that the Individual’s counselor was not aware of the May 2018 relapse. *Id.* at 97. He testified that denial and minimization are very much a part of an Alcohol Use Disorder. *Id.* at 103. The Psychologist testified that he would like to see the Individual finish his group program, discuss his May relapse with his counselor, and participate in any aftercare his counselor recommends. *Id.* at 98. He also recommended that the Individual remain abstinent indefinitely and that he would consider the Individual rehabilitated after six months to a year of abstinence, calculated from the date of the May relapse. *Id.* at 98–99.

V. ANALYSIS

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all of the evidence, both favorable and unfavorable, in a common sense manner. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

A. Guideline G

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 a pattern of modified consumption or abstinence. Guideline G at ¶ 23(a)–(d).

The road to recovery is often rocky. The Individual has relapsed a number of times, but he has returned to abstinence each time. His efforts are commendable and he demonstrated a serious commitment not just to sobriety, but to self-improvement. He has fully acknowledged that he abused alcohol and is working to maintain abstinence. However, it takes time to show a lasting change in behavior. The Individual’s relapses have been somewhat frequent and he has not been abstinent long enough to demonstrate that he will not relapse again. The Individual is working toward that goal, and with enough time, he can very likely demonstrate a clear and established pattern of abstinence. However, at this time, he is not yet rehabilitated and I cannot find that he has mitigated the security concerns under Guideline G.

B. Guideline E

Guideline E provides that the following conditions (in relevant part) may mitigate Personal Conduct security concerns: (1) the Individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) the offense is so

minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment; (3) the Individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and (4) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the Individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 17(a), (c), (d), (g).

The Individual's lack of candor is inextricably linked to his alcohol abuse. During the hearing, the Individual demonstrated honesty and integrity, speaking at length about the reasons for his relapse and admitting that he had been misleading about how much he had to drink before his DWI arrest. He has made significant progress. However, until his alcohol issues are resolved, I cannot be certain that he will continue this honesty, especially when the potential consequences of being honest are very high. At this time, the Individual has not mitigated the security concerns under Guideline E.

C. Guideline J

Mitigating factors for Guideline J include the passage of so much time since the criminal activity that further criminal behavior is unlikely, and evidence of successful rehabilitation. Adjudicative Guidelines at ¶ 32(a), (d). Because of the strong presumption against restoring security clearances, I must deny restoration unless I am convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

As with the Guideline E concerns, the Individual's criminal activity concerns are inextricably linked to his alcohol concerns. Until the Individual is rehabilitated, there is a risk that he will consume alcohol and drive. He has done it at least twice, the second time after a promise not to drink and drive. Realizing that alcohol abuse leads to bad decisions, I cannot be certain that the Individual will not drive after consuming alcohol unless he is rehabilitated from his alcohol issues. Accordingly, at this time, the Individual has not mitigated the security concerns under Guideline J.

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 E, G, and J 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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals