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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: September 19, 2018) Case No.: PSH-18-0069
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Issued: November 29, 2018

Administrative Judge Decision

Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") to hold an 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, 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 security clearance should be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires him to hold a security clearance. In January 2018, the Individual filed an incident report informing his employer that he was arrested for and charged with Driving While Intoxicated (DWI). Ex. 6. This incident prompted the Local Security Office (LSO) to conduct a personnel security interview (PSI) with the Individual in February 2018. Ex. 9. Because the PSI did not resolve the security concerns, the LSO requested a psychological evaluation of the Individual, which a DOE-consultant psychologist (DOE Psychologist) conducted in May 2018. The DOE Psychologist later submitted a report of his assessment (Psychological Evaluation). Ex. 7.

The LSO informed the Individual, in a letter dated August 2, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to continue holding a security clearance. See 10 C.F.R. § 710.21. In an attachment to the Notification Letter,

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.

the LSO explained that the derogatory information raised concerns under Guideline G (Alcohol Consumption). Ex. 1.

The Individual requested an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently convened a hearing pursuant to 10 C.F.R. § 710.25(d), (e) and (g). At the hearing, the LSO submitted 10 numbered exhibits (Ex. 1-10) and the Individual submitted 11 lettered Exhibits (Ex. A-K). The Individual presented the testimony of five witnesses and testified on his own behalf, while the LSO presented the testimony of the DOE Psychologist. *See Transcript of Hearing, Case No. PSH-18-0069 (hereinafter cited as “Tr.”).*

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 cited Guideline G as the basis for suspending the Individual’s security clearance. 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.” Adjudicative Guidelines at ¶ 21. The LSO asserted that: (1) the Individual was arrested and charged with DWI and that his blood alcohol content (BAC) at the time was .294 g/210L; (2) a DOE Psychologist diagnosed the Individual with Alcohol Abuse Disorder, Moderate, in early remission under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5); and (3) the Individual admitted during the PSI that his wife had expressed concerns in the past about his alcohol consumption. Ex. 1. The Individual’s alcohol-related incident away from work and the DOE’s Psychologist’s diagnosis justify the LSO’s invocation of Guideline G. Adjudicative Guideline at ¶ 22(b), (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 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

On January 20, 2018, the Individual was arrested for DWI after consuming about eight 12-ounce beers over about three-and-a-half hours. Ex. 7 at 3; Ex. 9 at 16-17, 46. A blood test conducted subsequent to his arrest showed that his BAC was .294 g/210L. Ex. 7 at 3. A couple of days after the incident, the Individual saw his employer's psychiatrist who referred him to an independent psychologist (Individual's Psychologist). Ex. 9 at 37. In February 2018, the Individual's Psychologist recommended that the Individual start an Intensive Outpatient Program (IOP) to address his alcohol consumption. *Id.* at 35, 38. The six-week program involved three-hour group therapy sessions, four times a week. *Id.* at 39-40.

During the PSI, the Individual described his drinking habits, stating that his alcohol consumption increased when he was about 30 years old. Ex. 9 at 54. For about the past ten years, the Individual had consumed alcohol five to six times per week. *Id.* at 54-55. On two or three weeknights each week, he would have two to three 12-ounce beers. *Id.* at 57. On a Friday or Saturday, he would have six to eight 12 oz. beers over roughly at 10 hour period. *Id.* at 57, 59-60. The Individual stated during the PSI that he stopped consuming alcohol altogether immediately after his DWI arrest. *Id.* at 44.

After the PSI, the DOE Psychologist evaluated the Individual. Ex. 7. He diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission. *Id.* at 5. The DOE Psychologist ordered two tests to determine the Individual's recent alcohol use, and the results indicated that the Individual had not consumed alcohol in the 30 days prior to the testing. *Id.* at 5-6, 12. The DOE Psychologist recommended that the Individual abstain from alcohol for a full year, submit to at least five ethyl glucuronide (EtG) tests,² submit to at least four phosphatidylethanol (PEth) tests,³ attend his IOP's follow-up support group once weekly, and attend Alcoholics Anonymous (AA) or a similar group twice weekly. Ex. 7 at 7.

The Individual submitted into the record five negative PEth test results and four negative EtG test results (Exs. A-C; Exs. G-H; Ex. K), approximately 36 AA attendance slips (Ex. I), a negative breathalyzer test result (Ex. J), and certificates of completion from three alcohol education courses (Exs. D-F).

At the hearing, the Individual's wife testified that the Individual was scared after his DWI and that he took the incident very seriously. Tr. at 12-13. She testified that he immediately began abstaining from alcohol and has not consumed alcohol since his arrest. *Id.* at 13, 29. She stated that she has been a strong support for the Individual in his recovery. *Id.* at 13. She testified that, based on her

² An EtG test provides information about alcohol consumption over the previous two to four days. Ex. 7 at 5.

³ A PEth test provides information about alcohol consumption over the previous three weeks. Ex. 7 at 5.

experiences over 17 years of marriage, she believes the Individual when he states his intent to abstain from alcohol indefinitely. *Id.* at 26-27.

The Individual's supervisor testified that, having known the Individual for about a year and a half, he has no concerns about the Individual's honesty, reliability, or judgment and he considers the Individual trustworthy. Tr. at 33. The supervisor testified that he is unaware of any instance in which the Individual came to work under the influence of alcohol or missed work due to alcohol consumption. *Id.* at 36. The Individual's friend testified that the Individual's DWI was a "big deal" for the Individual and his family. *Id.* at 42. He testified that the Individual took responsibility for his actions and developed a plan to move forward and work on his issues. *Id.* at 42-44, 46-47. The friend had never heard the Individual complain about not being able to consume alcohol. *Id.* at 44. He testified that the Individual continues to donate his time at fundraisers where alcohol is served and does not have any difficulty remaining abstinent at those events. *Id.* at 44-45. He testified that the Individual intends to remain abstinent indefinitely. *Id.* at 46.

The Individual's AA sponsor testified that the Individual calls regularly and at the exact times when he says he will, demonstrating accountability and responsibility. Tr. at 56-57. The sponsor testified that he would not invest in the Individual if he did not believe in his commitment to sobriety and that he considers himself to be part of the Individual's support system. *Id.* at 60. He believed that the Individual benefits from the various groups he attends and that his participation has been meaningful. *Id.* at 67.

The Individual testified that he does not disagree with the DOE Psychologist's assessment. He does not deny that he has had problems with alcohol consumption in the past, but he does not consider himself an alcoholic. Tr. at 72, 102. He testified that soon after his arrest, he felt a kind of relief because he was finally pushed to get the help he knew he needed. *Id.* at 79. The Individual testified that he has not consumed any alcohol since his arrest. *Id.* at 95. He felt that the positive changes he has made as a person have already made this experience worthwhile and that, though he loves his work, if the only thing he lost from his DWI was his job, he would still feel that he "came out ahead." *Id.* at 92-93. The IOP showed him how bad things could get for him and he was grateful to have stopped consuming alcohol before his situation got worse. *Id.* at 81. He testified that he intends to follow all treatment recommendations by medical and mental health professionals. *Id.* at 85.

The Individual also testified that he regularly attends AA meetings, speaking when he has something he needs or wants to say, but he focuses more on listening and learning. *Id.* at 89-91. He also attends one-on-one counseling sessions. *Id.* at 85. The Individual testified that he intends to abstain from alcohol indefinitely and that his life is better without alcohol. *Id.* at 91-92. When he was still consuming alcohol, he did not see how he was hurting himself and others and, now that his eyes are open, he wants to continue improving. *Id.* at 92. The Individual testified that there is still alcohol in his house for his family or friends that come over, but that he does not feel tempted to consume any. *Id.* at 98-99. He testified that he no longer needs alcohol and that he has "grown out of it." *Id.* at 99. He testified that he has a strong support system available to him at any time of the day or night to help him avoid a relapse. *Id.* at 100-101.

The Individual's Psychologist testified that she first saw him about one week after his arrest. Tr. at 105. She testified that the Individual believes that he was abusing alcohol and feared he could become an alcoholic in the future if he did not stop consuming alcohol. *Id.* at 107, 120. In regard

to the Individual's refusal to label himself an alcoholic, she opined that "how they label themselves is not of great consequence," and that, as long as a person accepts that he has a problem with alcohol and stops consuming alcohol, the treatment goal is satisfied. *Id.* at 120-123. She testified that the Individual is rule-oriented and has been very compliant with treatment and testing recommendations. *Id.* at 110, 118-119. While the Individual has often questioned certain ideas presented to him, the counselor testified that the Individual is not combative, but rather seeks to fully understand so that he can incorporate the new information into his rule-based personal code of conduct. *Id.* at 115. The counselor testified that the Individual is successfully incorporating the ideas and techniques from his treatment into his life and that she believed the Individual would not return to consuming alcohol. *Id.* at 117.

The DOE Psychologist testified that, though the Individual had only been abstinent for 10 months, he had been very proactive and was committed to abstinence. Tr. at 126. The DOE Psychologist agreed with the counselor that the label of "alcoholic" was not important in this case as long as the Individual remains abstinent. *Id.* at 127-128. He opined that the recommended year of abstinence is somewhat arbitrary and that the Individual has otherwise demonstrated rehabilitation. *Id.* He testified that he does not think the arbitrary timeline should hold the Individual back and that two more months would not "make that much difference." *Id.* at 127-128. He testified that the Individual had a positive prognosis of remaining abstinent in the coming years. *Id.* at 128. He further testified that this was the most promising case that he had ever dealt with. *Id.* at 130.

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 be restored. I 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 a pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23(a)-(d).

Although he does not label himself an alcoholic, the Individual clearly acknowledges that he had a problem with his alcohol consumption. Guideline G at ¶ 23(b). He recognizes the unhealthy effects of his alcohol use and understands that his continued consumption could result in dangerous consequences. The Individual has also committed to lifelong abstinence. His credibility is bolstered by the fact that he stopped consuming alcohol immediately after his arrest, recognizing his issue

with alcohol long before his Alcohol Use Disorder diagnosis. He has attended multiple alcohol education classes to learn coping skills and successfully completed an IOP. Guideline G at ¶ 23(c)-(d). He continues to attend support groups with professionals and peers, as well as individual therapy. The Individual has built a strong support system that includes a sponsor and family and friends who understand his alcohol issues. Most importantly, he has made good on his commitment to abstain from alcohol, demonstrating a clear and established pattern of abstinence over a period of 10 months. He has never relapsed and has a list of people to call at any hour if he feels at risk.

While expert opinions are not determinative in these cases, they do carry weight. Both experts agreed that the Individual calling himself an alcoholic is not important but that his continued sobriety is. Both experts gave the Individual a positive prognosis. The DOE Psychologist testified that, in his opinion, the Individual is rehabilitated, despite falling short of the clinical 12 month timeframe. Importantly, personnel security cases do not turn on whether an individual has a clinical diagnosis, but rather on whether an individual has mitigated the security concerns. The Individual has worked hard at changing his unhealthy alcohol consumption habits and has convinced two experts that he will remain abstinent, with one of them adding that this case is the most promising he has seen. For the foregoing reasons, I find that the Individual has mitigated the Guideline G security concerns described in the Notification Letter.

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 F of the Adjudicative Guidelines. I further find that the individual has succeeded in fully resolving those concerns. Therefore, I 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 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.

Brooke A. DuBois
Administrative Judge
Office of Hearings and Appeals