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In the Matter of: Personnel Security Hearing)
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Filing Date: December 11, 2018) Case No.: PSH-18-0086
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Issued: March 4, 2019

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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, "Procedures for Determining Eligibility for Access to Classified Matter and 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. On January 18, 2018, the Individual tested positive for alcohol at work during a random breath alcohol test (BAT). *See* DOE Ex. 4. The Individual was placed on work restrictions which, among other things, prohibited him from consuming alcohol. *See* DOE Ex. 5 at 16. Several days later, a psychologist in the occupational medicine department at the Individual's place of employment (Employer's Psychologist) examined the Individual. *Id.* The Individual reported that he had consumed approximately four (4) beers and three (3) shots of hard alcohol the night before his positive BAT, that he had not consumed alcohol prior to that night since 1992, and that he did not know why he had consumed alcohol that night. *Id.* at 17.

On February 23, 2018, the Individual participated in a personnel security interview (PSI) with the local security office (LSO), during which he reported that he drank one (1) to two (2) beers once or twice per year prior to his positive BAT. DOE Ex. 7 at 29–30. However, during a psychological evaluation with a DOE-contracted psychologist (DOE Psychologist) on April 9, 2018, the Individual admitted that he had consumed substantially more alcohol than he said he had during

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 PSI, and continued to do so even after being placed on the work restrictions following his positive BAT. DOE Ex. 5 at 3–5. After her evaluation of the Individual, the DOE Psychologist concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V)*. *Id.* at 8.

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 concerning the matter. At the hearing, the LSO introduced eight (8) numbered exhibits (DOE Ex. 1–8) into the record and presented the testimony of the DOE Psychologist. The Individual introduced unlabeled exhibits, which I organized into three (3) lettered exhibits (Ind. Ex. A–C), into the record and presented the testimony of six (6) witnesses, including himself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) as one basis for denying the Individual a security clearance. DOE Ex. 1.

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Guideline E at ¶ 15. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The Notification Letter asserted that the Individual admitted during the psychological evaluation that he had lied about his alcohol consumption during the PSI in 2018, to an OPM investigator in 2015, and on numerous occasions in his annual Human Reliability Program (HRP) evaluations. DOE Ex. 1. The Individual's statements deliberately providing false or misleading information concerning his alcohol consumption to persons involved in making recommendations relevant to a national security eligibility determination justify the LSO's invocation of Guideline E. Guideline E at ¶ 16(b).

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

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Guideline G at ¶ 21. The Notification Letter listed as relevant facts: the DOE Psychologist's determination that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation; the Individual's admission to having consumed three (3) to four (4) beers and one (1) to two (2) shots daily on weekdays and four (4) to five (5) beers and six (6) to seven (7) shots daily on weekends from 2008 to 2013; the Individual's admission to having consumed two (2) to three (3) shots daily on weekdays and three (3) to five (5) shots daily on weekends from 2013 to 2018; and, the Individual's admission to having consumed three (3) to five (5) shots every other day between January 18, 2018, and March 17, 2018, despite being required to abstain from alcohol during that period. The Individual's alcohol-related incidents at work, habitual or binge consumption of alcohol to the point of impaired

judgement, and diagnosis by the DOE Psychologist as suffering from Alcohol Use Disorder justify the LSO's invocation of Guideline G. Guideline G 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.

IV. FINDINGS OF FACT

The Individual was arrested and charged with Driving While Intoxicated (DWI) in 1989 and 1992. *See* DOE Ex. 5 at 4. The Individual reported to the DOE Psychologist that he abstained from alcohol from 1992 to 2003, when the Individual's son was rendered paraplegic following a car accident which the Individual attributed to his son's drinking and driving. *See id.* at 5. According to the Individual, his drinking increased “little by little” over time until he was consuming as many as four (4) beers and two (2) shots daily on weekdays and five (5) beers and seven (7) shots daily on weekends in 2008. *See id.* The Individual reported that his drinking decreased slightly in 2013 after he was diagnosed with diabetes, at which point he was consuming two (2) to three (3) shots daily during the week and three (3) to five (5) shots daily on weekends. *See id.* The Individual reported to the DOE Psychologist that he consumed alcohol at this level until March 17, 2018, the date of his last drink of alcohol, and that he did not believe that he became intoxicated when he engaged in his regular drinking in the past. *See id.*

The Individual told the DOE Psychologist that he consumed approximately three (3) to four (4) beers and three (3) to four (4) shots within two (2) hours the night before his positive BAT in January 2018. *See id.* The DOE Psychologist estimated that, based on the volume of alcohol the Individual consumed in two (2) hours, the Individual's blood alcohol content reached approximately .18 g/210L. *See id.* The Individual told the DOE Psychologist that he did not feel intoxicated and “didn't think I drank that much.” *Id.*

The Individual's employer placed him on work restrictions and prohibited him from drinking away from work following his positive BAT. *See id.* at 16. The Individual was also required to undergo periodic Ethyl Glucuronide (EtG) testing to verify his abstinence from alcohol. On March 7, 2018, the Individual tested positive for alcohol. *See id.* at 19. When confronted with the positive test result during a progress meeting with the Employer's Psychologist, the Individual initially denied drinking alcohol but then admitted to drinking a "couple of shots" while under the work restriction. *Id.* The Individual later revealed to the DOE Psychologist that he had significantly understated his alcohol consumption during this meeting with the Employer's Psychologist. *Supra* p. 3.

Besides his misrepresentation in the progress meeting with the Employer's Psychologist, the Individual misrepresented the level of his alcohol consumption in security investigative contexts on numerous occasions over a period of at least seven (7) years. The Individual entered the HRP in 2011. *See id.* The Individual reported to the DOE Psychologist that he had misrepresented his alcohol consumption during annual HRP evaluations since 2011. *Id.* During an interview with an OPM investigator in 2015, the Individual told the investigator that he did not consume alcohol because he did not like it and that he had never been charged with a criminal offense involving alcohol. DOE Ex. 8 at 55. During a psychological evaluation following his positive BAT, the Individual told the Employer's Psychologist that he had been abstinent from alcohol for years prior to consuming alcohol the night before his positive BAT. DOE Ex. 5 at 17. During the PSI, the Individual stated that he drank one (1) to two (2) beers once or twice per year prior to his positive BAT. DOE Ex. 7 at 29–30.

The DOE Psychologist required the Individual to undergo a Phosphatidylethanol (PEth) test and an EtG test immediately following her evaluation of the Individual. The results of both tests were negative. DOE Ex. 5 at 13–15. The DOE Psychologist noted in her report that these results supported the Individual's claim to have abstained from alcohol between March 17, 2018, and the date of the psychological evaluation on April 9, 2018. *Id.* at 6–7.

After completing her evaluation of the Individual, the DOE Psychologist concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *DSM-V*. *Id.* at 8. In her report, the DOE Psychologist indicated that the Individual met seven (7) of the eleven (11) diagnostic criteria for Alcohol Use Disorder in the *DSM-V*. *Id.* at 7. The DOE Psychologist recommended that, to demonstrate rehabilitation, the Individual should: (a) participate in group and individual counseling for three (3) months; (b) participate in an aftercare program for an additional nine (9) months; (c) abstain from alcohol for the duration of his participation in treatment; (d) document his attendance at Alcoholics Anonymous (AA) meetings on at least a weekly basis; (e) obtain an AA sponsor and work the twelve-step AA program; and, (f) undergo random alcohol testing, including at least four (4) PEth tests, over the twelve-month period of treatment. *Id.* at 8. Alternatively, the DOE Psychologist recommended that, to demonstrate reformation, the Individual should: (a) abstain from alcohol for at least twenty-four (24) months; and, (b) undergo random alcohol testing, including at least quarterly PEth tests, for twenty-four (24) months. *Id.*

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the exhibits and the testimony 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 Guidelines. The security concerns at issue center on whether the Individual's alcohol consumption and untruthful personal conduct impair his judgement, stability, reliability, or trustworthiness. After due deliberation, I find that the Individual's DOE security clearance should be restored. Specifically, I find that restoring the Individual's security clearance would not endanger the common defense and security, and that doing so would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The relevant evidence and my specific findings in support of this decision are discussed below.

A. Guideline G Considerations

The Individual does not contest the allegations set forth in the Notification Letter. Hearing Transcript (Tr.) at 66–67. Instead, the Individual asserted during the hearing that he has mitigated the concerns set forth in the Notification Letter by substantially satisfying the DOE Psychologist's treatment recommendations, and thus has demonstrated his rehabilitation. *Id.* at 67–68.

An Individual may mitigate security concerns under Guideline G if:

- (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;
- (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.

Guideline G at ¶ 23(a)–(d). For the reasons set forth below, I find that the Individual has satisfied the mitigating conditions set forth in paragraphs 23(b) and 23(d) of the Adjudicative Guidelines.²

The Individual provided testimony and evidence to show that he had substantially satisfied each of the DOE Psychologist's treatment recommendations. The Individual and his wife testified that the Individual attended weekly AA meetings, sometimes with his wife, and that he intended to continue to do so for the foreseeable future. Tr. at 13, 20, 76. The Individual further testified that he had a sponsor with whom he spoke on a weekly basis, that the sponsor was available as a resource if the Individual had an urge to consume alcohol, and that he was working the twelve (12)

² I find paragraph 23(a) inapplicable because the Individual consumed alcohol in violation of work restrictions only ten (10) months prior to the hearing, and the Individual had established a pattern of problematic alcohol consumption over a period of many years. I find paragraph 23(c) inapplicable because the Individual previously participated in treatment and relapsed in 2003 after approximately eleven (11) years of abstinence from alcohol.

steps of AA. *Id.* at 76, 78–80. The Individual offered a letter from the sponsor, who wrote that the Individual was an active AA participant who the sponsor believed had remained sober. Ind. Ex. A.

The Individual also testified that he had pursued counseling with a Licensed Professional Clinical Counselor (Individual's Counselor), and that his counseling, along with his attendance at AA meetings, had helped him to recognize that he was an alcoholic who could not manage any level of alcohol consumption without losing control. Tr. at 69–71. The Individual's Counselor testified that the Individual had satisfactorily completed the Individual's Counselor's treatment program, which included twenty (20) weeks of group counseling, an alcohol education course, and monthly individual counseling. *Id.* at 32–33. The Individual's Counselor testified that the Individual had made notable progress, particularly with respect to acknowledging his alcohol consumption problem, and that the Individual was now in aftercare. *Id.* at 33–35. The Individual's Counselor opined that the Individual's prognosis for abstaining from alcohol in the future was very good, provided that he continued to attend AA meetings. *Id.* at 35.

An Employee Assistance Program counselor (EAP Counselor) who met with the Individual beginning in January 2018 also testified on the Individual's behalf. The EAP Counselor testified that she provided hybrid services to the Individual, including alcohol education, individual counseling, and coordinating treatment services with other treatment providers. *Id.* at 53–54. The EAP Counselor described a breakthrough that the Individual experienced in his counseling with her after his positive EtG test in March 2018. *Id.* at 55–57. According to the EAP Counselor, the Individual faced the reality that he could not hide or control his drinking, openly disclosed the extent of his drinking, and accepted that he needed professional help. *Id.* The EAP Counselor testified that the Individual had made significant progress, and that she believed that the Individual was now intrinsically motivated to abstain from alcohol. *Id.* at 57. The EAP Counselor further opined that she believed that the Individual's prognosis to abstain from alcohol in the future was excellent. *Id.* at 60–61.

During the hearing, the Individual testified that he last consumed alcohol in March 2018. *Id.* at 83. As evidence of his abstinence from alcohol, the Individual offered the results of two (2) PEth tests, the first conducted in October 2018 and the second in January 2019, each of which was negative. Ind. Ex. C. The EAP Counselor also testified that the Individual was required to undergo alcohol testing as part of his work restriction, and that he had not tested positive for alcohol to her knowledge since March 2018. Tr. at 58–59. The Individual's Counselor also testified that he had no reason to question the Individual's sobriety since the Individual began treatment. *Id.* at 33.

After observing the entirety of the hearing, and all of the testimony offered therein, the DOE Psychologist testified that her diagnosis of the Individual was modified to Alcohol Use Disorder, Moderate, in early sustained remission, and that she believed that the Individual was rehabilitated. *Id.* at 105, 107. The DOE Psychologist further testified that she believed that the Individual had substantially satisfied her treatment recommendations, and that, although the Individual had abstained from alcohol for ten (10) months instead of the twelve (12) months she had recommended, she did not believe that an additional two (2) months of abstinence would significantly change her opinion of the Individual's condition. *Id.* at 106–07. The DOE Psychologist opined that the Individual's prognosis for abstaining from alcohol in the future was good to very good. *Id.* at 110. Although she acknowledged the Individual's prior relapse into problematic alcohol consumption after treatment and years of abstinence, the DOE Psychologist

asserted that she believed that the Individual's cultivation of new supportive relationships, his improved relationship with his wife, and the "organic changes" in the Individual's mindset differentiated his new commitment to abstinence from alcohol from his prior effort. *Id.* at 109–10.

Based on the Individual's abstinence from alcohol, which is supported by laboratory test results and witness testimony, the testimony of the Individual's Counselor that the Individual satisfactorily completed his treatment program, and the opinion of the DOE Psychologist that the Individual has substantially complied with her treatment recommendations and is rehabilitated, I find that the Individual satisfies two (2) of the mitigating conditions under Guideline G of the Adjudicative Guidelines. Guideline G at ¶ 23(b), (d). Accordingly, I conclude that the Individual has mitigated the security concerns asserted by the LSO under Guideline G of the Adjudicative Guidelines.

B. Guideline E Considerations

An individual may mitigate security concerns under Guideline E of the Adjudicative Guidelines if "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 the untrustworthy . . . behavior, and such behavior is unlikely to occur." Guideline E at ¶ 17(d). The Individual asserts that he does not intend to drink alcohol again, and therefore he will never have occasion to lie about his alcohol consumption in the future. The DOE Psychologist also opined that the Individual did not clinically present as an untrustworthy person in any aspect except for his consumption of alcohol. *Id.* at 108.

The OHA has, in prior cases, evaluated the security concerns associated with a person's misrepresentations about alcohol consumption in tandem with the security concerns associated with the person's alcohol consumption when "[d]enial and minimization of alcohol use[, which] is a common symptom of alcohol abuse, [] appears to explain the individual's behavior." See *Personnel Security Hearing*, PSH-17-0016 at 8 (2017). In this case, the Individual and the EAP Counselor described the Individual's denial of his problematic alcohol consumption and the gradual process by which he came to acknowledge and overcome his problem. Tr. at 55–57, 74. The DOE Psychologist opined that the Individual's treatment rehabilitated him from his Alcohol Use Disorder, and that the Individual was unlikely to be untruthful in the future without the stressors associated with his alcohol consumption. *Id.* at 108–09. I find the DOE Psychologist's opinion to be persuasive, and accordingly find that the Individual has mitigated the security concerns asserted by the LSO under Guideline E of the Adjudicative Guidelines.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guidelines E and G of the Adjudicative 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.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals