

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: December 27, 2018) Case No.: PSH-18-0090
)
)
_____)

Issued: March 19, 2019

Administrative Judge Decision

Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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, “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 granted.

I. BACKGROUND

The Individual is an applicant for a DOE security clearance. His background investigation revealed two alcohol-related arrests, which prompted the Local Security Office (LSO) to conduct a Personnel Security Interview (PSI) in April 2018. Ex. 9. After the PSI, a DOE-consultant Psychologist (DOE Psychologist) conducted an evaluation of the Individual (Psychological Evaluation), submitting a report in July 2018. Ex. 6.

The LSO informed the Individual, in a letter dated October 11, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In an attachment to the Notification Letter, 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

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.

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 ten numbered exhibits (Ex. 1-10) and the Individual submitted seven lettered exhibits (Ex. A-G). The Individual presented the testimony of one witness and testified on his own behalf, while the LSO presented the testimony of the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0090 (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 LSO created a substantial doubt concerning his eligibility for a security clearance, citing Guideline G of the Adjudicative Guidelines as the basis. 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. In invoking Guideline G, the LSO cited the DOE Psychologist’s diagnosis of the Individual with Alcohol Use Disorder, Mild, the Individual’s two alcohol-related arrests, and the Individual’s admissions about his alcohol consumption during the PSI as security concerns. The Individual’s alcohol-related incidents away from work and the diagnosis by the DOE Psychologist 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.

IV. FINDINGS OF FACT

The Individual began drinking alcohol when he was around 18 or 19 years old. Ex. 9 at 70. During his PSI, the Individual stated that at this age he would drink socially at parties, maybe twice a month, becoming intoxicated approximately half the time. *Id.* at 72-74. In 1999, the Individual was arrested for Driving Under the Influence (DUI) at 20 years old. *Id.* at 9. The Individual stated during the PSI that leading up to the arrest, he drank approximately three 12 or 16-ounce cans of Heineken, which did not interact well with his anxiety medication. *Id.* at 10. After passing out while driving, the Individual awoke in the front yard of a neighbor's house, damaging only his own car. *Id.* at 13. The Individual was arrested and charged with DUI and underage possession (for beer in the trunk of his car), but later pleaded to only the DUI, completing all the requirements of his plea agreement. *Id.* at 14-16. During the PSI, the Individual admitted that he was aware at the time that he should not take his anxiety medication with alcohol, but stated that he did not mix the two in order to exacerbate the effect of the alcohol. *Id.* at 11-12.

In 2004, the Individual was arrested again for DUI. *Id.* at 33. During the PSI, the Individual stated that, knowing he was going to a wedding with an open bar, he arranged to have a designated driver take him to his parents' house afterwards because they were watching his daughter. *Id.* at 34-36. After sleeping for a few hours at his parents' house, the Individual remembered that he did not have his work clothes for the next day. *Id.* at 38. During the PSI, the Individual stated that he did not feel drunk at this point, so he drove to his house. *Id.* On the way home, the Individual drove into a construction zone on a closed road. *Id.* at 40. After he failed a police-administered field sobriety test and the Individual's breathalyzer test indicated that he had an approximate .17 blood alcohol level (BAC), the Individual was arrested for DUI, among other driving charges. *Id.* at 41-42.

As part of his plea in this case, the Individual served two weeks in jail with work release, followed by 45 days of home detention monitored by GPS, which included monitoring by a breathalyzer machine, and an interlock device (testing for alcohol) on his vehicle once his license was reinstated. *Id.* at 47-48, 51-54. During the PSI, the Individual admitted that, prior to 2004, there were likely other occasions when he drove under the influence but since then he has not. *Id.* at 67-68.

During the PSI, the Individual admitted that his alcohol consumption increased partly due to his divorce in 2003. *Id.* at 88. At this point, he was drinking approximately five to six drinks, once a week, a lot of times at home alone. *Id.* at 88-89. After his second DUI arrest, the Individual ceased his alcohol consumption in compliance with his plea agreement, but started drinking again probably six months after completing his court-ordered requirements. *Id.* at 92-94. At the time of the PSI, the Individual described his alcohol consumption as occurring primarily in social situations, approximately three or four beers, once a month. *Id.* at 99-100. The Individual stated that he has on occasion intentionally abstained from alcohol (outside of when required to as part of his DUI cases) because he does not feel like alcohol is a positive influence on him, but at the time of the PSI, had not completely stopped drinking because he enjoys the taste of alcoholic beverages and the social interaction involved with alcohol use. *Id.* at 118-119.

In July 2018, the DOE Psychologist evaluated the Individual. Ex. 6. During the Psychological Evaluation, the Individual reported that he had been abstinent for approximately a month and that he intended to continue his sobriety for at least another month. *Id.* at 5. While the DOE Psychologist expressed some concern in her report about the Individual's use of alcohol while being prescribed anxiety and depression medication, she stated that the Individual did not demonstrate any signs of current anxiety or depression. *Id.* at 7-8. The DOE Psychologist diagnosed the Individual with

Alcohol Use Disorder, Mild, without adequate evidence of rehabilitation or reformation. *Id* at 9. The DOE Psychologist recommended a six-month period of abstinence, demonstrated by three Phosphatidylethanol (PEth) tests² every two months, and an intensive outpatient program (IOP) and aftercare. *Id*.

During the hearing, the Individual's friend testified that, to her knowledge, the Individual had not consumed alcohol since July. Tr. at 13-14, 20-21. She testified, when the Individual returned from a road trip, he brought her back craft beer. Tr. at 20. When she offered him one of the beers, the Individual told her this would be his last beer because he had decided to stop drinking. Tr. at 20-21. The Individual's friend testified that the Individual is very serious about his sobriety and that as his friend, she supports this lifestyle change. Tr. at 21.

The Individual testified that he did not dispute the alcohol-related incidents outlined in the Notification Letter or the DOE Psychologist's diagnosis of an alcohol use disorder. Tr. at 26-28, 43. He stated that in early 2018, he came to the realization that he needed to stop drinking not only because of the negative consequences associated with his drinking, but also because he did not like the way he felt after drinking. Tr. at 32. Although in the past the Individual has abstained from alcohol for a week or two, he testified that during a two-week road trip, he came to an epiphany that his abstinence from alcohol needed to be permanent. Tr. at 35-36.

The Individual testified that he completed an IOP in October 2018, which met three times a week for 12 weeks. Tr. at 36-37; see also Ex. A. After the IOP, the Individual began his long-term recovery program, meeting with this group every week. Tr. at 37, 40; see also Ex. B, G. At the time of the hearing, the Individual was still attending this long-term recovery program and testified that his intention was to continue attending weekly as long as his insurance paid for it. Tr. at 46. Additionally, the Individual has attended several Alcoholics Anonymous (AA) meetings, an AA-like secular recovery group, and a recovery meditation group. Tr. at 38-39. The Individual also submitted as exhibits four negative PEth tests performed in August 2018, October 2018, November 2018, and January 2019. Ex. C-F. The Individual testified that his intention is to never drink again. Tr. at 42. He stated that when triggered, he often relies on meditation and other tools he has learned in his recovery groups. Tr. at 42.

The DOE Psychologist testified last after listening to the testimony of the Individual and his witness. She stated that the Individual's recovery is promising. Tr. at 53. She testified that his present attitude as it relates to sobriety is different from when she met with him in July 2018, at which time he seemed unsure about lifelong abstinence. Tr. at 55. She found that the Individual appeared to be truthful and forthcoming, and that, in her opinion, the likelihood of a relapse was low. Tr. at 56-57. The DOE Psychologist testified, that although 12 months of sobriety is considered full (or sustained) remission, she does not believe that four additional months of sobriety would change her opinion about the Individual's commitment to his recovery. Tr. at 57-58. She gave him a favorable diagnosis for the future, testifying that the Individual went beyond her expectations in his commitment to his recovery. Tr. at 58.

V. ANALYSIS

² A PEth test provides information about alcohol consumption over the previous three weeks.

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 granted. I find that granting the Individual a 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).

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) 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; (2) the individual acknowledges his or her pattern of maladaptive alcohol abuse, 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; (3) the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program; or (4) 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. Adjudicative Guidelines at ¶ 23(a)-(d).

In this case, it is important to note that the Individual's two DUI arrests were over 15 years ago. Guideline G at ¶ 23(a). Although the Individual continued to drink after these alcohol-related incidents, in early 2018, the Individual started acknowledging how alcohol negatively affected his life and began taking steps towards recovery. Guideline G at ¶ 23(b). The testimony of the Individual's witness corroborated his statements about his sobriety date, his current abstinence, and his future intentions with alcohol. *See Tr.* at 11-24. Before meeting with the DOE Psychologist, the Individual stopped drinking alcohol, and immediately after meeting with the DOE Psychologist, he began seeking professional assistance with his recovery. Guideline G at ¶ 23(c). There is no evidence that the Individual has relapsed after making this commitment to sobriety. Not only did the Individual follow the recommendations outlined by the DOE Psychologist in her report, but he also went beyond her expectations and continues to be active with his recovery. Guideline G at 23(d). The Individual submitted documentation not only of his recovery efforts but also of his sustained abstinence. *See Exs. A (certificate for completion of IOP), B and G (letters verifying IOP completion and continuing participation in aftercare); see also Exs. C-F (negative PEth tests).* Additionally, while expert opinions are not determinative in these cases, they do carry weight. The DOE Psychologist's favorable prognosis of the Individual was persuasive. Based on the foregoing, I find that the Individual has mitigated the Guideline G security concerns outlined in the Notification Letter.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that granting a DOE security clearance 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 grant 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