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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: January 31, 2019) Case No.: PSH-19-0010
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Issued: May 21, 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 restored.

I. BACKGROUND

The Individual is employed in a position that requires him to maintain a security clearance. In January 2018, the Individual self-reported that he was involuntarily held for a psychiatric evaluation. Ex. 6. After this incident report, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the Individual in June 2018, then later requested that a DOE-consultant Psychologist (DOE Psychologist) evaluate the Individual. Ex. 9. In September 2018, the DOE Psychologist submitted a report (Psychological Evaluation) detailing his examination and findings regarding the Individual. Ex. 7.

The LSO informed the Individual, in a letter dated December 20, 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.

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 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). Before the hearing, the LSO submitted ten numbered exhibits (Ex. 1-10) and the Individual submitted three lettered exhibits (Ex. A-C). During the hearing, the Individual testified on his own behalf, while the LSO presented the testimony of the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-19-0010 (hereinafter cited as “Tr.”). After the hearing, the Individual submitted three additional exhibits (Ex. D-F).

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, 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 Guideline G at ¶ 21. In invoking Guideline G, the LSO cited the DOE Psychologist’s conclusion that the Individual meets the *Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, 5th edition* (DSM-5) criteria for Alcohol Use Disorder-Mild without adequate evidence of rehabilitation or reformation. Ex. 1. Additionally, the LSO cited the Individual’s statements during his PSI about his drinking habits and the January 2018 incident that led to the Individual’s hospitalization. *Id.* Alcohol-related incidents away from work and the diagnosis by a duly qualified mental health professional both justify the LSO’s invocation of Guideline G. Guideline G at ¶ (a), (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 started drinking during his freshmen or sophomore year of high school in approximately 2007 or 2008. Ex. 9 at 40-41. The Individual would normally drink six or seven beers socially about once a month at parties with friends. *Id.* at 43. Around 2016, the Individual's alcohol consumption increased to about six to eight beers once a week mostly while watching football or doing yardwork. *Id.* at 47, 70. The Individual normally drinks at home or when he has dinner at a local Mexican restaurant, but indicated that he has never driven intoxicated. *Id.* at 45, 57, 76.

During his PSI, the Individual recalled that on January 18, 2018, after working a 38-hour shift, he drank approximately twelve 12-ounce beers between 8:30pm and 12:30am. *Id.* at 10-11. Sometime during the night, the Individual cut himself on his left upper thigh with a knife, prompting his wife to call 911, after which the police took him to the Emergency Room. *Id.* at 12-15. After receiving treatment for his leg, the Individual was involuntary hospitalized for approximately two days for a mandatory psychiatric evaluation due to the self-inflicted injury. *Id.* 16-17. The Individual reported his mental health hospitalization to his employer on January 31, 2018. Ex. 6 at 2.

The Individual stated during the PSI that after the January 2018 incident he stopped drinking for a couple of months, however, after the death of his grandmother in March 2018, he resumed consuming alcohol. *Id.* at 34. For about five days after his grandmother's death, the Individual stated that he drank about 14 or 15 beers a day. *Id.* at 59-60. After this, the Individual returned to his previous alcohol consumption level of six to eight beers over a four hour period approximately once a week. *Id.* at 56. At the time of the PSI, the Individual was still consuming alcohol and stated that, outside of the January 2018 incident, he had never felt concerned about his alcohol consumption. *Id.* at 60, 66. The Individual indicated at the time that he did not intend to abstain from alcohol, but rather planned to "stay...ahead of [his] use of it." *Id.* at 77.

The Individual met with the DOE Psychologist in September 2018. Ex. 7. During the Psychological Evaluation, the Individual stated that the night of the January 2018 incident, he was in a great mood watching a movie with his wife when a song triggered sadness and anger towards his father with whom he had recently "had words." *Id.* at 7. This song caused the Individual to drink more, and while his wife was feeding their baby, he took a knife from the kitchen, intentionally cutting his upper thigh. *Id.* The Individual does not recall this incident because he blacked out, but his recollection comes from his wife who witnessed a majority of the incident. *Id.*

During the Psychological Evaluation, the Individual indicated that, after the June 2018 PSI, he reduced his consumption of alcohol to no more than six beers in a three hour period, one or two days a month during football season. *Id.* at 5. As part of the Psychological Evaluation, the DOE Psychologist requested an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test. *Id.* at 4. The EtG test indicated that the Individual consumed alcohol in the three days prior to the sample collection, while the PEth test was positive at a level of 225 ng/mL, which is consistent with regular heavy alcohol consumption. *Id.* The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Mild and recommended at least 12 months of abstinence supported by random breathalyzer tests, random EtG tests, and at least two PEth tests. *Id.* at 8-9. Additionally,

the DOE Psychologist recommended that the Individual attend Alcoholic Anonymous (AA) or a similar program at least once weekly. *Id.* at 9.

During the hearing, the Individual testified that his childhood was “pretty dysfunctional” as he saw his father struggle with drug addiction. Tr. at 10. He testified that because he did not see alcohol use growing up, he did not understand that alcohol was a dangerous addictive substance similar to the drugs he witnessed his father using. Tr. at 21.

When testifying about the January 2018 incident, the Individual acknowledged that he should not have mixed his prescribed anxiety medication with alcohol. Tr. at 21. He also testified that he was sleep deprived that night after working an especially long shift as a laborer. Tr. at 13, 21. The Individual, however, denied ever wanting to harm himself. Tr. at 14. After being released from the hospital, the Individual followed the hospital’s recommendations for aftercare to address his anxiety issues. Tr. at 15. Currently, the Individual sees a doctor every two months regarding his anxiety and the associated prescribed medication. Tr. at 48. The Individual also visits a therapist on an “as needed” basis. *Id.*

The Individual stated that he was unsure whether he had to report the January 2018 incident since there were no legal consequences involved, but did so out of an abundance of caution after speaking with his union representative. Tr. at 17. The Individual testified that after the January 2018 incident he stopped drinking, until his grandmother died in March 2018, at which point he drank heavily because he did not “want to think about her not being there.” Tr. at 18.

The Individual testified that he has abstained from alcohol since approximately October 25, 2018, when his clearance was suspended, stating that it was “a big eye-opener.” Tr. at 27. In January 2019, the Individual started attending Alcoholics Anonymous (AA) about twice a week. Tr. at 19; *see also* Ex. F. The Individual also submitted evidence documenting his AA attendance beginning in April 2019. When asked why he just started collecting documentation of his AA attendance in April 2019, the Individual stated that he did not know until he received the DOE Psychologist’s report in March 2019 that he needed to document his attendance for the present hearing. Tr. at 24. Since January 2019, the Individual also underwent four EtG tests and one PEth test to corroborate his abstinence. Tr. at 25-26. The tests, ranging from January 25, 2019, to April 17, 2019, were negative. Ex. A-E.

The Individual testified that he no longer has a desire to drink, stating that it was not worth the trouble it caused him. Tr. at 26. The Individual testified that since he stopped consuming alcohol, he has dealt with several stressful situations without drinking, including worrying about his job security, a death in his wife’s family, and the effect that death had on his four children. Tr. at 43. Along with attending meetings, the Individual has used exercise, specifically running, as a stress reliever instead of drinking. Tr. at 44. He also indicated that he has a great support system, which includes his wife, his limited extended family, and his colleagues. Tr. at 40-41. The Individual testified that he does not intend to drink in the future. Tr. at 42.

The DOE Psychologist testified that although the EtG and PEth tests she ordered indicated that the Individual minimized his alcohol use when discussing it during the Psychological Evaluation, she believed his testimony during the hearing regarding his six months of abstinence and AA attendance. Tr. at 57-58. The DOE Psychologist testified that, given that the Individual has not had

any legal involvement related to alcohol and that he had a mild alcohol use disorder diagnosis, she believes he has demonstrated adequate rehabilitation despite only abstaining from alcohol for six of the twelve months recommended. Tr. at 59. She testified that because the Individual chose lifelong abstinence she believes his risk of relapse is low and that his prognosis is good. Tr. 60-61. She stated that she would recommend the Individual continue in AA working the system to its fullest by connecting with a sponsor, and continue his outpatient mental health treatment. Tr. 58-59, 61.

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 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, although the Individual's drinking habits generally raised a security concern, the January 2018 incident, which led to his hospitalization after a night of heavy drinking, was a one-time occurrence. Guideline G ¶ 23(a). The Individual has had no previous or subsequent alcohol-related incidents at work or at home. Additionally, the factors precipitating this incident (the Individual working a 38-hour shift and the song triggering strong emotions after an argument with his father) are unusual circumstances unlikely to recur. *Id.* Additionally, although the Individual initially did not acknowledge he had an alcohol problem, he has since done so and demonstrated a pattern of abstinence. Guideline G ¶ 23(b). I find the Individual's testimony that he has remained abstinent for approximately six months while participating in AA for approximately four months to be credible. The Individual is also making efforts to address the underlying cause of his prior heavy alcohol consumption, which is his anxiety. While expert opinions are not determinative in these cases, they do carry weight. The DOE Psychologist testified that, in her opinion, the Individual is rehabilitated despite falling well short of the recommended 12 months of abstinence. Based on his testimony that he plans to pursue lifelong abstinence, the DOE Psychologist gave the Individual a positive prognosis and low chance of relapse. Based on the foregoing, I find that the Individual has successfully mitigated the Guideline G security concerns.

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 restoring 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 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