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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 3, 2019) Case No.: PSH-19-0051
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Issued: December 9, 2019

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

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

I. BACKGROUND

The Individual is employed by a DOE contractor in a position requiring that he hold a security clearance. The Individual properly reported derogatory information regarding a 2018 arrest, and after an investigation, more derogatory information was uncovered regarding the Individual’s alcohol use. A DOE-consultant Psychologist (the DOE Psychologist) evaluated the Individual and diagnosed him with Substance Use Disorder-Alcohol, mild in severity. The Local Security Office (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 September 3, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO presented the testimony of the DOE Psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-19-0051(hereinafter cited as “Tr.”). The

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.

LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted 14 exhibits, marked as Exhibits A through N.

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 Guideline G (Alcohol Consumption) 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).

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration.

Guideline G states: “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 conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. *Id.* at ¶ 22.

The LSO alleges that the Individual was unable to abstain from alcohol, despite a desire to do so following an alcohol-involved domestic dispute. Ex. 1 at 1. The LSO also alleges that the Individual attempted to abstain from alcohol after an arrest for a disorderly conduct but admitted that within a few weeks, the Individual was again consuming 10 to 20 beers per night. *Id.* Further, the LSO contends that (1) the Individual admitted to drinking six to twenty beers per day from 2013 to 2018; (2) was arrested and charged with Aggravated Battery and Wrongful Imprisonment in September 2018 after an alcohol-involved domestic dispute with his wife; (3) was arrested and charged with Minor in Possession of Alcohol twice in 2002, once while operating a motor vehicle; and (4) was arrested and charged with Underage Drinking in 2001. Ex. 1 at 1–2. Finally, the LSO states that, in April 2019, the Psychologist diagnosed the Individual with Substance Use Disorder–Alcohol, mild in severity, without adequate evidence of rehabilitation or reformation under the *Diagnostic and Statistical Manual–Fifth Edition (DSM-5)*. *Id.* at 2. Accordingly, the LSO’s security concerns under Guideline G 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

In addition to testifying himself, the Individual presented the testimony of his friend, his co-worker, and his supervisor. Tr. at 10, 24, 39. The LSO presented the testimony of the DOE consulting psychologist. *Id.* at 148.

The Individual's witnesses, his friend, coworker, and supervisor, all testified that the Individual is trustworthy and has a good moral character. Tr. at 16, 28, 40. The friend testified that he has known the Individual for 20 years and that the Individual is dependable and dedicated to his family. *Id.* at 11-12. The friend also stated that he has not seen the Individual consume alcohol to the point of intoxication, and has not seen the Individual consume alcohol in about a year. *Id.* at 17-19. The co-worker and supervisor both asserted that they have not seen the Individual come to work late or hungover. *Id.* at 26-27, 40-41.

The Individual testified that when he was cited for minor in possession of alcohol, he was the designated driver and had not been drinking. Tr. at 50–53. He claimed that he was “guilty by association.” *Id.* at 53. He declared that his second minor in possession of alcohol while operating a vehicle citation was also a case of guilt by association. Regarding that incident, he stated that he had not been drinking, but that his friend had been drinking. *Id.* at 54–55. After his 2016 arrest for disorderly conduct and assault, the Individual asserted that he abstained from alcohol for at least

eight months. *Id.* at 61. He testified that he resumed drinking because he was not sure, at the time, that his drinking was the source of his problems and that he “needed to evaluate that.” *Id.* at 61, 66.

The Individual stated that the longer he was out of the military, the more depressed he became. He claimed that he turned to alcohol to cope, which he characterized as a bad decision. Tr. at 67. The Individual testified that, before the 2018 domestic dispute, he drank the equivalent of 8 beers and four shots over the course of the day, but denied feeling intoxicated. *Id.* at 67–68. He alleged that his wife attacked him and he attempted to restrain her. *Id.* at 69–70. He testified that, after he left, his wife called the police and lied, saying that he had harmed her. *Id.* at 70–71. The case was dismissed when his wife refused to testify. *Id.* at 72–73. After the 2018 incident, he and his wife attended couples therapy intermittently, and they recently began attending again, though they were living separately as of the hearing date. *Id.* at 75–76.

The Individual stated that he enjoys Alcoholics Anonymous (AA), especially the spiritual aspects. Tr. at 62. He claimed that he attended AA meetings three to five times per week for about six months after the 2018 incident, but stopped attending regularly after that. *Id.* at 108–11. He stated that he has a sponsor and is working the “12 Steps.” *Id.* at 84–85, 110–12. The Individual declared that, about four weeks before the hearing, he began seeing a therapist who specialized in substance abuse. They have discussed various issues in addition to his alcohol misuse. *Id.* at 77–80. He testified that the therapist has diagnosed him as experiencing alcohol use disorder, in remission. *Id.* at 83. The Individual avowed that, because he is abstinent, there is not much to discuss in his therapy sessions regarding his alcohol use. *Id.* at 121. He claimed that, in late September or early October 2019, he was put on a waiting list for an Intensive Outpatient Program through the Department of Veterans Affairs (VA). *Id.* at 79. The Individual stated that he has also seen a (VA) therapist twice in 2019. *Id.* at 125.

The Individual further testified that he did not discuss treatment recommendations with the DOE Psychologist. Tr. at 78. At the hearing, he did not commit to lifelong abstinence but indicated that he may drink if not employed by the DOE Contractor. *Id.* at 114–19. However, if his clearance was reinstated, he would accept as a condition of his employment a ban on his consumption of alcohol. *Id.* at 81. The Individual testified that he had been abstinent for six months, having relapsed in April 2019 while on an employment related travel and again at a sporting event shortly thereafter. *Id.* at 81, 115. During this trip, he consumed more than 10 shots the first night and reported feeling no loss of motor skills or other typical symptoms of intoxication. *Id.* at 116, 134–35. The next night he consumed two beers, despite having a hangover from the previous night. *Id.* at 135, 140–41. Even though he drank more than he intended while on the trip, the Individual unequivocally testified that he has never had a problem with alcohol. *Id.* at 114. *See also id.* at 77.

The Individual stated that he drank in April 2019 because he wanted to see if he could stop after consuming two drinks. *Id.* at 117. However, a month prior, the Individual stated in his Letter of Interrogatory that he did not believe he could stop at one drink and that he did not intend to drink in the future. *Id.* at 141–42. At the hearing, the Individual stated that he wrote that because he was trying to adhere to AA’s values, but that he now disagrees with that philosophy. *Id.* at 142–43.

At the hearing, the Individual denied that he ever drank 10 to 20 beers per night. Tr. at 133–34. He claimed that he would consume a six pack of craft beer while watching sports. *Id.* at 136–37. He asserted that he typically drank on weekends but never during the week. *Id.* at 95. On those

occasions he would consume a six pack of craft beer or some margaritas. *Id.* The Individual declared that he would not drink to intoxication, which he described as experiencing slurred speech, slower reaction times, difficulty with motor skills, or loss of control. *Id.* at 137.

The DOE Psychologist testified that the Individual told him that he could not have even one drink without risking consuming 10 to 20 drinks. Tr. at 152. He found it troubling that the Individual has turned away from that philosophy. *Id.* at 153. He asserted that the Individual told him that he was only abstinent for three to six months after the 2016 arrest. *Id.* at 154. The DOE Psychologist further stated that the Individual told him that he would drink 10 to 20 drinks per night on the weekends during that time. *Id.*

The DOE Psychologist additionally testified that he could not say that the Individual is rehabilitated or reformed. Tr. at 164, 187–9. He based this on his understanding of the Individual’s testimony at the hearing. *Id.* at 160–61. The DOE Psychologist asserted that the Individual was minimizing his drinking and that the Individual was not being candid when discussing his alcohol use. *Id.* at 161. The DOE Psychologist testified that he was concerned that the Individual continued to drink two more times after his binge while on employment related travel. *Id.* at 159. He opined that the Individual clearly cannot moderate his alcohol consumption and that it is concerning that he is leaving the door open to future moderate alcohol consumption. *Id.* at 164–65. The DOE Psychologist indicated that the Individual is depressed and shows a history of depression. *Id.* at 168–69, 188–89, 204. *See also* Ex. N at 28. He worried that the Individual’s depression could again lead him to turn to alcohol to cope. Tr. at 182. The DOE Psychologist also challenged the use of the term “in remission” in the private therapist’s diagnosis because the *DSM-5* states that sustained remission occurs after 12 months of continuous abstinence. *Id.* at 170–71. He stated that the Individual, if telling the truth, may be in partial or early remission as of the hearing date. *Id.* at 186–87.

The DOE Psychologist recommended that the Individual attend an IOP and start seeing a substance abuse therapist. Tr. at 165, 189–90. In his opinion, the Individual had not seen his private therapist enough to be effective. *Id.* at 165. The DOE Psychologist recommended two hours of treatment activities, four nights per week. *Id.* at 166. He also recommended that the Individual regularly attend a recovery support group, such as AA, SMART Recovery, or IOP Aftercare. *Id.* at 189, 191–92. Based on the Individual’s current treatment activities, minimization of alcohol use, and minimization of the effects of his alcohol use, the DOE Psychologist opined that he could not give the Individual at good prognosis for recovery. *Id.* at 169, 183–84.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government requires a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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 the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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.

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 pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual’s alcohol use was sufficiently frequent and recent that it still casts doubt on his current reliability, trustworthiness, and judgment. In particular, his inconsistency in reporting his alcohol consumption, as well as his choice to resume drinking in April 2019, indicate that his judgment and trustworthiness are compromised at this time. He also wavered in acknowledging his pattern of alcohol abuse, stating multiple times that he has never had a problem with alcohol or that he is not sure if he has an alcohol problem. His actions do not indicate that his issues with alcohol have been overcome. For example, he relapsed despite his AA attendance and, in fact, ended his regular AA attendance after his relapse. The Individual has not been attending therapy long enough for it to be effective. Finally, the Individual has not established a pattern of modified consumption or abstinence. He has been abstinent for no more than six months following a relapse that came after another months-long period of abstinence. Additionally, the DOE Psychologist has credibly testified that the Individual does not meet the *DSM-5* criteria for remission of his diagnosed alcohol use disorder.

At this point, the evidence presented indicates that the Individual’s has not resolved the concerns raised by his alcohol consumption and the DOE Psychologist’s diagnosis. Accordingly, I cannot find that the Individual has mitigated the Guideline G concerns.

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 G 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 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.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals