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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: November 7, 2019)	Case No.: PSH-20-0009
)	
_____)	

Issued: January 17, 2020

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or 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 not be restored.

I. Background

A DOE contractor (Contractor) employs the Individual in a position that requires him to hold a security clearance. In February, 2019, the Individual disclosed to the Local Security Office (LSO) that he had been arrested and charged with Aggravated Driving While Under the Influence of Liquor or Drugs (DWI). Ex. 8 at 2. The LSO subsequently issued the Individual a Letter of Interrogatory (LOI) concerning the circumstances of his arrest. Ex. 9. Additionally, a DOE consulting psychiatrist (DOE Psychiatrist) evaluated the Individual in May 2019. Ex. 10.

Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter, dated September 27, 2019, (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1 at 1-2.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2 at 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted twelve numbered exhibits (Exhibits 1-12) into the record and presented the testimony of the DOE Psychiatrist. The Individual submitted 24 exhibits, which were labeled Exhibits A-X, and presented the testimony of two witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines G and J of the Adjudicative Guidelines. Ex. 1. Guideline G relates to security risks arising from alcohol consumption. 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. Guideline G at ¶ 21. Guideline J addresses criminal conduct. Criminal activity creates doubt about a person’s judgment, reliability,

and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Guideline J at ¶ 30.

In citing Guideline G, the LSO relied upon the evaluation of the DOE Psychiatrist, who determined that the Individual met the diagnostic criteria for Alcohol Use Disorder, Mild, without adequate evidence of rehabilitation or reformation under the Diagnostic and Statistical Manual of Mental Health Disorders, 5th Edition (DSM-5). Ex. 1 at 1. The LSO also cited two separate instances in which the Individual was arrested for DWI, one in February 2019 and one in February 2015.² *Id.* Lastly, as support for Guideline J, the LSO again listed the Individual's two DWI arrests, and the Individual's admission within the LOI that he consumed alcohol in violation of the Conditions of Release in connection with his 2019 DWI. *Id.* at 2.

IV. Findings of Fact

The Individual acknowledged the accuracy of all of the allegations in the Notification Letter and sought to mitigate any security concerns. Ex. 2; Tr. 15-17. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

In May 2019, the DOE Psychiatrist conducted an evaluation of the Individual. Ex. 10. During the evaluation, the Individual reported that he had last consumed alcohol approximately two weeks prior, when he drank "one beer at home," which he knew was in violation of the 2019 DWI Conditions of Release. *Id.* at 5. The Individual denied having consumed any other alcohol since the arrest. *Id.* The Individual expressed to the DOE Psychiatrist that his recent arrest was "an eye-opener," but that he did not feel that he needed treatment and that the possibility that he might have Alcohol Use Disorder was "not an issue." *Id.* The Individual also expressed the intention to return to drinking at some time in the future. *Id.*

The DOE Psychiatrist noted that the Individual had four alcohol related legal problems while holding a security clearance: (1) an incident in which law enforcement detained him in a "detox" facility, (2) the 2015 DWI, (3) the 2019 Aggravated DWI, and (4) the 2019 violation of his Conditions of Release. *Id.* at 1, 8. He concluded that, based on these behaviors, the Individual met the diagnostic criteria for Alcohol Use Disorder, Mild. *Id.* at 7-8. The DOE Psychiatrist further determined that the Individual had not shown adequate evidence of rehabilitation or reformation because the Individual was still consuming alcohol, "most likely to excess,"³ and had never entered into voluntary treatment for alcohol abuse, nor did he feel the need to do so. *Id.* at 9. In order to demonstrate adequate evidence of rehabilitation or reformation, the DOE Psychiatrist recommended that the Individual enroll in an outpatient treatment program for one year, consisting of attendance at Alcoholics Anonymous (AA) at least once per week, abstinence from alcohol, and "perhaps individual counseling as well" *Id.*

² The February 2019 charge was Aggravated DWI. Ex. 8.

³ This opinion was based upon the results of a phosphatidylethanol (PEth) test, which measured 170 ng/ml, "mak[ing] it medically certain that he ha[d] been drinking heavily within the last 21-28 days" before the evaluation. Ex. 10 at 6-7.

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 has not sufficiently mitigated the security concerns asserted by the LSO with regard to Guidelines G and J. Therefore, I have determined that the Individual's security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

At the hearing, the Individual presented one character witness, his supervisor. Tr. at 86. The witness testified that the security concerns were briefly disclosed to him, but he had confidence in the Individual's performance of his job duties as well as the Individual's prospects in terms of recovery. *Id.* at 91-93. The Individual's witness also testified that the Individual has demonstrated sound judgment while performing his job duties. *Id.* at 93.⁴

The Individual testified that on the night of his 2019 Aggravated DWI arrest, after celebrating with friends until two o'clock in the morning, he tried to obtain an Uber ride because he knew he was "too drunk to drive." *Id.* at 21, 72. However, he could not locate the Uber, and he chose to drive his car in spite of his intoxication. *Id.* He testified that he felt like he needed a meal, so he drove to a fast food restaurant drive-through. While waiting in line, he put his vehicle in park and fell asleep in the in drive-through line. *Id.* at 21-22. His next memory was waking up to two police officers knocking on his vehicle window. *Id.* at 22. The Individual explained nearly identical circumstances leading up to his 2014 DWI arrest, the primary difference being the name of the fast-food restaurant. *Id.* at 24.

The Individual explained that following his 2019 arrest, he became abstinent from alcohol until mid-May 2019, when he consumed one beer. *Id.* at 27. The Individual acknowledged that consuming this beer was in violation of his conditions of release. *Id.* at 74. The Individual testified that aside from the one beer, he was abstinent until late September when he consumed a "couple of beers" for his brother's birthday, and after his DWI had been "cleared up." *Id.* at 27, 74. His next use of alcohol was not until Thanksgiving when he consumed three beers. *Id.* at 29. He asserted that he has not consumed any alcohol between Thanksgiving and the time of the hearing. *Id.*

The Individual testified that his employer enrolled him in a program at a "counseling organization" in his area. *Id.* at 29. He explained that he worked with the organization from late February until early April, attending individual and group sessions. *Id.* at 29. He noted that he also met with a psychologist at his employment site, a site official, and engaged in one, ten minute, Employee Assistance Program (EAP) session. *Id.* at 31. He claimed that none of these individuals felt that he

⁴ The Individual also provided a number of signed letters, attesting to the quality of his character. *See* Ex. A-I.

needed any further treatments or assessments with regard to alcohol.⁵ *Id.* at 45, 48. As such, the Individual testified that he did not begin taking action to obtain treatment for the alcohol concerns until approximately one week prior to the hearing. *Id.* at 44, 49. Two days prior to the hearing, he underwent an assessment with a recovery program, which indicated that he has “moderate problems with drinking” and “mild symptoms of dependence.” Ex. W. The assessment further indicated that the Individual had a “high probability of having a Substance Use Disorder.” *Id.* The Individual began treatment that day and attended three AA meetings throughout the week of the hearing. *Id.*; Tr. at 56.

When questioned about why he failed to abstain from alcohol and follow the DOE Psychiatrist’s other recommendations, the Individual stated that he did not receive the DOE Psychiatrist’s report until early October, and had he known about it earlier, he “would have already been conducting [the DOE Psychiatrist’s] recommendations.” *Id.* at 40. When confronted about the fact that he consumed alcohol following the receipt of the report, the Individual stated that he “didn’t know that it was going to be to the point where if [he] did consume alcohol it was going to be an issue.” *Id.* at 78. He further relied on the assertion that “four other individuals” informed him that he did not need additional assessments or treatment. *Id.* However, he did acknowledge that if he would have taken action in early October, when he received the DOE Psychiatrist’s report, “it would look a lot better, having two months compared to two days.” *Id.* at 79.

After observing the entire hearing, and all of the testimony offered therein, the DOE Psychiatrist testified that, although the Individual “admitt[ed] that there’s a problem,” the Individual had not yet been rehabilitated or reformed. *Id.* at 117, 120. The DOE Psychiatrist stated that his recommendations that the Individual complete a year-long program, and abstain from alcohol remained unchanged. *Id.* Without significantly more time pursuing abstinence and treatment than the brief time the Individual had demonstrated as of the date of the hearing, the DOE Psychiatrist testified that he lacked sufficient evidence to conclude that the Individual was “free of that period where there’s going to be really a significant chance that he’s going to relapse.” *See id.* at 117-118.

A. Guideline G

Alcohol offenses away from work, such as driving while under the influence, diagnosis of alcohol use disorder by a duly qualified medical professional, and failure to follow any court order regarding alcohol abstinence all raise security concerns and can render an individual ineligible for access authorization. Adjudicative Guidelines at ¶ 22(a), (d), (g). An individual may be able to mitigate such security concerns by acknowledging a pattern of maladaptive alcohol use, providing evidence of actions taken to overcome the problem, and demonstrating a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(b).

⁵ Despite this assertion, the Individual only submitted a letter from one of these providers, stating that he did not “display any significant substance abuse” and “no ongoing treatment needs were identified” at the time he was assessed. Furthermore, this letter solely contains six sentences about the Individual and is wrought with grammatical errors, raising questions about its credibility. *Id.* Ex. J.

Here, not only was the Individual arrested for both DWI and Aggravated DWI, but the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Mild. As part of the Individual's conditions of release for his 2019 arrest for Aggravated DWI, he was prohibited from consuming alcohol, yet he chose to consume a beer. Further, the DOE Psychiatrist indicated that, in order to show adequate evidence of rehabilitation or reformation, the Individual should enroll in an outpatient treatment program of moderate intensity, including abstinence from alcohol, for one year. The Individual claims that he did not receive the DOE Psychiatrist's report with sufficient time to take action; however, he received the report in early October, consumed alcohol at Thanksgiving, and did not take any action on the DOE Psychiatrist's recommendations until early December, approximately one week prior to the hearing. Although the Individual also relies on the claim that four providers informed him that he did not need further assessments or treatment with regard to his alcohol use, he has only provided evidence from one such provider, containing little explanation. While I recognize that the Individual has acknowledged his pattern of maladaptive alcohol use and has begun taking action to overcome this problem, he has not yet demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. *See id.*

For the reasons set forth above, I conclude that the Individual has not sufficiently mitigated the security concerns set forth in the Notification Letter with respect to Guideline G.

B. Guideline J

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness as it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Guideline J at ¶ 30. Evidence of criminal conduct could raise a security concern and may disqualify a person from holding a security clearance. *Id.* at ¶ 31(b). An individual may be able to mitigate the security concerns by demonstrating that the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. *Id.* at ¶ 20(a). Security concerns may also be mitigated by demonstrating evidence of successful rehabilitation. *Id.* at ¶ 32(d).

Here, the Individual knew he was intoxicated and should not have been driving prior to his February 2019 arrest. Yet, he made the decision to drive despite the fact that he was arrested in 2015 after engaging in identical behavior. Further, the Individual continued to engage in criminal behavior following his 2019 arrest by violating his conditions of release and consuming alcohol. The Individual has not provided sufficient evidence of rehabilitation, nor has he demonstrated that this behavior is unlikely to recur and does not cast doubt on his judgment, reliability, trustworthiness, or good judgment. *Id.* at ¶ 32(a), (d). Accordingly, I cannot find that the Individual has mitigated the security concerns with regard to Guideline J.

VI. CONCLUSION

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concern associated with Guidelines G and J. 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 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.

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Administrative Judge

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