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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: May 4, 2020)	Case No.: PSH-20-0056
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_____)	

Issued: August 26, 2020

Administrative Judge Decision

Steven L. Fine, 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 granted.

I. Background

The Individual, an applicant for a DOE Security Clearance, began this process by completing, signing, and submitting a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO) on December 31, 2018. Ex. 9. The Office of Personnel Management's (OPM) Investigation Service conducted an investigation of the Individual, and issued a report of its findings on February 22, 2019. Ex. 10. At the LSO's request, a DOE consulting psychologist (the Psychologist) evaluated the Individual on April 25, 2019, and issued a report of her findings on May 6, 2019. Ex. 11. After these procedures were concluded, the LSO determined that unresolved derogatory information remained in the Record which raised significant security concerns about the Individual. Accordingly, the LSO began the present administrative review proceedings on February 19, 2020, by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was

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.

entitled to a hearing before an Administrative Judge in order to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, the Psychologist, the Individual's present supervisor (the Supervisor) and the Individual's former supervisor (the Former Supervisor). *See* Transcript of Hearing, Case No. PSH-20-0032 (hereinafter cited as "Tr."). The DOE Counsel submitted eleven exhibits, marked as Exhibits 1 through 11. (hereinafter cited as "Ex."). The Individual submitted three exhibits, marked as Exhibits A through C.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in possession of the DOE created a substantial doubt concerning his eligibility for security clearance. That information pertains to Guidelines G, I, and J 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).

Under Guideline G (Alcohol Consumption), the LSO cites the Individual's history of six alcohol-related arrests.² Ex. 1 at 1-5. These allegations adequately justify the LSO's invocation of Guideline G. The Adjudicative Guidelines state: "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. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work. . . regardless of the frequency of the individual's alcohol use." Guideline G at § 22(a).

Under Guideline I (Psychological Conditions), the LSO alleges that the Psychologist determined the Individual habitually consumed alcohol to excess in the past and met the criteria for Unspecified Alcohol-related Disorder (UARD) in 2014. Ex. 1 at 5. The Psychologist further opined that the Individual was neither rehabilitated nor reformed from his UARD, and that the Individual has an illness or mental condition that may cause a significant defect in judgement or reliability. Ex. 1 at 5. These allegations adequately justify the LSO's invocation of Guideline I. The Adjudicative Guidelines state: "[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness." Guideline I at § 27. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness," and "[f]ailure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition[.]" Guideline I at §§ 28(b) and (d).

² The SSC cites the Psychologist's finding that Individual met the DSM-5's criteria for Unspecified Alcohol-related Disorder as derogatory information concerning the Individual. However, the SCC did not cite this finding under Guideline G, but rather cited this finding under Guideline I (Psychological Conditions) only.

Under Guideline J (Criminal Conduct), the LSO cites the Individual's history of six alcohol-related arrests in addition to the Individual's 2004 arrest for Patronizing Prostitution. Ex. 1 at 6. These allegations adequately justify the LSO's invocation of Guideline J. "Criminal activity creates doubt about a person's judgement, 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. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is "[e]vidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Guideline J at § 31(b).

III. REGULATORY STANDARDS

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all of the relevant evidence, favorable or 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 personal 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 has a history of six alcohol-related arrests during the period starting in 2004 and ending in 2014. In addition the Individual was also arrested for Patronizing Prostitution on May 21, 2004.

Because of the Individual's history of six alcohol-related arrests, the LSO requested that he undergo a psychological evaluation. The Psychologist evaluated the Individual on May 6, 2019. Ex. 11. After evaluating the Individual, the Psychologist issued a report of her findings on May 6, 2019, in which she concluded that the Individual "has in the past used alcohol habitually to excess" and met the criteria for unspecified alcohol-related disorder as described in the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) in 2014. Ex. 11 at 11, 13-14. Noting that the Individual "continues to consume [alcohol in] amounts that approach and occasionally exceed guidelines for moderate consumption," she further concluded that the Individual had not yet achieved rehabilitation or reformation from his excessive alcohol use or his UARD, since the

Individual continued to consume alcohol in unhealthy amounts on a monthly basis. Ex. 11 at 14-15. The Psychologist further noted that the Individual “[had] not had a period of abstinence or acquired sufficient knowledge and tools to ensure with confidence that judgement and reliability are free of potential jeopardy.” Ex. 11 at 14-15. Accordingly, the Psychologist recommended that the Individual abstain from alcohol use for at least six months, submit to random Blood Alcohol Content (BAC) testing, and participate in psychological counseling with a “a licensed outpatient mental health provider who works routinely with substance use issues” for at least six months. Ex. 11 at 15.

The Individual submitted a letter from a court-appointed substance abuse counselor confirming the Individual’s completion of an alcohol and drug assessment on September 4, 2014. Ex. A at 1. The court-appointed substance abuse counselor, did not recommend that the Individual undergo treatment for alcohol or substance abuse issues. Ex. A at 1. However he did recommend that the Individual complete sixteen hours of drug and alcohol education classes. Ex. A at 1. The Individual also submitted two letters authored by the Supervisor and the Former Supervisor, respectively. Ex. B, Ex. C. Both letters attest to the Individual’s good work ethic and diligence. Ex. B at 1, Ex. C at 1. The Former Supervisor’s letter confirmed that the Individual is subject to random drug and alcohol testing at work, and has always tested negative. Ex. B at 1.

The Hearing

The Former Supervisor testified that she had been the Individual’s supervisor when he was first hired in July 2018, and stated that she had not seen the Individual exhibit any unethical behavior. Tr. at 15. She described the Individual as a worker who takes initiative, follows procedures, and seeks clarification before proceeding with tasks. Tr. at 16. She testified that the Individual seems happy with his home life. Tr. at 17. She further testified that she has not noticed the smell of alcohol about the Individual’s person in the morning. Tr. at 20. The witness indicated that the Individual exhibits good judgement, and is trustworthy and reliable. Tr. at 21.

The Individual’s Supervisor testified that he has been the Individual’s direct supervisor for approximately six months, and sees the Individual every workday morning. Tr. at 32-33. The Supervisor characterized that the work they perform as “high-risk,” and confirmed that the environments in which they work pose a danger to “health and life.” Tr. at 30. He noted the Individual’s willingness to perform this difficult, important and demanding work. Tr. at 30. When the Supervisor was asked if he had ever smelled alcohol on or about the Individual’s person, the Supervisor confirmed that he has not. Tr. at 30. When asked if the Individual has earned the trust of the men and women with whom he works in those dangerous situations, the Supervisor confirmed that the Individual had. Tr. at 31. The Supervisor testified that he has learned from various sources close to the Individual, including the Individual’s fiancé, that the Individual has not consumed alcohol in a number of months. *Id.* at 34-35.

The Individual testified that he is subject to random drug and breathalyzer tests at his current place of employment, even if he is on-call or teleworking Tr. at 43. He attributed his five arrests in 2004 to his youth and lack of maturity, noting that that he “made some really poor decisions and put [himself] in situations that [were his] fault.” Tr. at 47-48. He further characterized himself at that time as “just a 20-year-old kid that made some stupid decisions and liked to go and party and

such.” Tr. at 49. He testified that he is no longer spending time with the same individuals he did in 2004. Tr. at 48. After the incidents in 2004, the Individual stopped “partying” for about a year, married his ex-wife, and spent his days working. Tr. at 49. When asked about the circumstances that resulted in his two arrests in 2014, the Individual stated that the arrest at the fast-food restaurant was the result of his stubbornness and poor judgement. Tr. at 50. The Individual testified that although he was charged with DUI that night, he had not actually consumed any alcohol. Tr. at 72.

The Individual acknowledged that he exercised poor judgement when he operated a motor vehicle under the influence of alcohol prior to his second DUI arrest in 2014. Tr. at 53. As a consequence of this arrest, he was fined, and was required to undergo an alcohol and drug evaluation by the presiding judge. Tr. at 54. The evaluator recommended that the Individual receive 16 hours of drug and alcohol education. Tr. at 55. The Individual complied with that recommendation. Tr. at 55. The Individual testified that he was embarrassed by his arrest and learned from his drug and alcohol education course. Tr. at 57. The Individual testified that he decided to change his behavior after his evaluation by the Psychologist. Tr. at 60. The Individual testified that his last use of alcohol occurred on January 1, 2020. Tr. at 63, 65. He testified that does not feel pressure from friends to consume alcohol, and his efforts to abstain from alcohol are supported by his fiancé. Tr. at 67-68. He recognizes that he had a problem with alcohol, but now he remains abstinent, and no longer desires to consume alcohol. Tr. at 73.

The Psychologist testified that she evaluated the Individual on April 25, 2019. Tr. at 79. The Psychologist testified that, after hearing the other witnesses’ testimony, she now believes that he has been sufficiently rehabilitated. Tr. at 80-81. The Psychologist cited a number of factors in support of this conclusion. She noted that the Individual’s random drug tests at his place of employment had not detected alcohol use and that his supervisors did not suspect alcohol consumption. Tr. at 82. She further cited the Individual’s testimony that “[h]e does not see a need for alcohol in the future,” and that he has, in fact, had more alcohol education in the past than he initially remembered, as factors weighing in his favor. Tr. at 83-84. The Psychologist testified that she had recommended counseling primarily because she expected that counseling would educate the Individual about his alcohol use. Tr. at 84-85. Noting that she had recommended a total of eighteen hours of alcohol education-related counseling, the Psychologist opined that the sixteen hours of alcohol education the Individual received in 2014 is sufficient to meet her counseling recommendation. Tr. at 85. The Psychologist further testified about several other factors that led to her conclusion that the Individual has been rehabilitated from his excessive alcohol use and UARD. Specifically, she testified that she further considered the Individual’s supervisors’ high opinion of him, as a factor suggesting his rehabilitation. Tr. at 86. The Psychologist further noted that six years had passed since the Individual’s last alcohol related arrest. Tr. at 86. She characterized the Individual’s UARD as mild, and noted that the Individual had no comorbidities. Tr. at 87. The Psychologist also noted that the Individual had reported that he had not consumed alcohol since January 1, 2020, and does not plan to use alcohol in the future. Tr. at 82-83. She further noted the Individual has minimized his life stressors, does not report any difficulties remaining abstinent, and stated that his primary relationship is going well. Tr. 87-88.

V. ANALYSIS

Guideline G Concerns

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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.” Guideline G at § 23(b).

The Individual’s testimony indicates that he now recognizes his maladaptive alcohol use, especially after he was evaluated by the Psychologist, and that he has taken action to ensure that the circumstances that resulted in his inappropriate alcohol use are no longer an ongoing concern. Importantly, the Individual has gone approximately six years without an alcohol-related charge or arrest and has credibly testified that he has abstained from alcohol consumption since January 1, 2020. Tr. at 63, 86. Further, the Individual has stated that he no longer socializes with former associates, does not keep the company of those who would find his abstinence problematic, and has a supportive fiancé. Tr. at 48, 67-68. I note that the Psychologist’s testimony that the Individual has been rehabilitated from his UARD provides compelling evidence that that Individual has mitigated the derogatory evidence concerning him raised under Guideline G.

The Psychologist’s opinion that the Individual has been rehabilitated from his UARD, the testimony of the Individual regarding his understanding of his maladaptive alcohol use, the actions taken by the Individual to overcome this issue, and his ongoing abstinence from alcohol have mitigated the security concerns raised in the Notification Letter under Guideline G.

Guideline I Concerns

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline I if a “[r]ecent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation.” Guideline I at § 29(c).

As indicated in her report, the Psychologist diagnosed the Individual with UARD in 2014, and found that the disorder had not yet been resolved. The Psychologist further found that, at the time of the evaluation, the Individual “continue[d] to consume amounts that approach and occasionally exceed guidelines for moderate consumption.” Ex. 11 at 11. At the hearing, the Psychologist confirmed that there was no reason to revise that assessment as it stood at the time of the evaluation. At the Hearing, however, the Psychologist opined that the Individual is now rehabilitated from his UARD. The Psychologist made this assessment at the hearing based on the Individual’s recognition of his problem with alcohol, his negative breathalyzer results, his abstinence from alcohol use since January 1, 2020, and his stated intention to refrain from future alcohol use. Tr. at 82-83. She also considered the sixteen hours of alcohol education the Individual received, the fact that his UARD is mild, and without any comorbidities, and her belief that the

reduced stressors in the Individual's life will help him with his ongoing efforts to remain abstinent from alcohol. Tr. at 85-87.

For the reasons set forth above, I conclude that the Individual has mitigated the security concerns raised in the Notification Letter under Guideline I.

Guideline J Concerns

The Adjudicative Guidelines provide that an individual can mitigate concerns arising under Guideline J if "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of the criminal activity, remorse or restitution, job training, ore higher education, good employment record, or constructive community involvement." Guideline J at § 32(d).

As indicated above, the Individual's last arrest was in 2014, approximately six years ago. The record also indicates that the Individual paid all associated fines and costs and complied with all other requirements as outlined by the judgment rendered against him. Tr. at 53-55. Since 2014, the Individual has secured steady employment, and has endeavored to live in a law-abiding manner. Tr. at 58-59, 70. Importantly, the Individual has expressed a desire to continue living in a responsible manner, as he understands the consequences of irresponsible and illegal behavior are more than he is willing to bear. Tr. at 69-70. Moreover, it is clear from the record that alcohol consumption was the primary cause of the Individual's entanglement with the legal system, and he credibly testified that he has remained abstinent since January 1, 2020. Tr. at 62.

In light of the passage of a significant period of time without the recurrence of criminal activity, as well as the Individual's good employment record following his criminal conduct, I find that the Individual has mitigated and resolved the security concerns arising under Guideline J.

VI. CONCLUSION

For the reasons set for above, I conclude that the LSO properly invoked Guidelines G, I, and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has mitigated those security concerns raised under Guidelines G, I, and J. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be granted. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals