

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

In the Matter of: Personnel Security Hearing)
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Filing Date: February 11, 2020)
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Case No.: PSH-20-0041

Issued: December 11, 2020

Administrative Judge Decision

Kimberly Jenkins-Chapman, 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 not be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In October 2018, the Individual was arrested and charged with Aggravated Assault. Exhibit (Ex.) 7 at 2–3. According to the arresting officer, the Individual’s girlfriend reported that the Individual, after consuming alcohol, had pushed her and grabbed her throat. *Id.*

The local security office (LSO) recommended that the Individual undergo an evaluation by a DOE-contracted psychiatrist (DOE Psychiatrist). *See* Ex. 4 at 1 (recommending referral for an evaluation). During a clinical interview with the DOE Psychiatrist on May 19, 2019, the Individual denied having consumed alcohol for three to four weeks prior to the clinical interview. Ex. 8 at 1, 6. However, the results of a laboratory test provided evidence that the Individual had engaged in moderate to heavy alcohol consumption within the week prior to the clinical interview. *Id.* at 8, 13. The DOE Psychiatrist subsequently issued a written psychiatric evaluation (Report) in which he opined that the Individual binge consumed alcohol to the point of impaired judgement and met

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.

the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 8–9.

On December 23, 2019, the LSO issued the Individual a letter in which it suspended the Individual’s security clearance and indicated that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted ten numbered exhibits (Ex. 1–10) into the record. The Individual submitted four exhibits into the record (Ex. A–D).² At the hearing, the LSO presented the testimony of the DOE Psychiatrist. The Individual presented his own testimony as well as testimony from two other witnesses.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for suspending the Individual’s security clearance. Ex. 1 at 1. “Conduct involving questionable judgement, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The Summary of Security Concerns asserted that the Individual was deceptive about his alcohol consumption during the clinical interview with the DOE Psychiatrist. Ex. 1 at 1. The LSO’s allegation that the Individual provided false or misleading information to a mental health professional involved in making a recommendation relevant to a national security eligibility determination justifies the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the other basis for suspending the Individual’s security clearance. Ex. 1 at 1–2. Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Summary of Security Concerns listed as relevant facts: the DOE Psychiatrist determined that the Individual binge consumed alcohol to the point of impaired judgement; the DOE Psychiatrist concluded that the Individual met the diagnostic criteria for AUD, Moderate, under the *DSM-5*; and, the Individual was arrested and charged with Aggravated Assault in connection with an altercation after drinking. Ex. 1 at 1–2. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, binge consumed alcohol to

² I held the record open following the hearing to allow the Individual to submit exhibits. The Individual submitted four unlabeled exhibits. I have labeled a one-page note from the Individual’s girlfriend as Exhibit A, a two-page report regarding a laboratory test for ethanol as Exhibit B, a four-page chain of custody document associated with the laboratory test as Exhibit C, and the results of five workplace breath alcohol tests as Exhibit D.

the point of impaired judgement, and was diagnosed with AUD by a duly qualified medical or mental health professional, justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(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

On October 23, 2018, the LSO received documentation indicating that the Individual had been arrested and charged with Aggravated Assault. Ex. 7 at 1. In an affidavit provided to the LSO, a law enforcement officer reported that he responded to a domestic disturbance and observed the Individual's girlfriend sitting in her vehicle with a handgun, talking to the Individual. *Id.* at 3. The Individual's girlfriend told the officer that the Individual came into the house after “drinking all night,” had lifted the bed in which she was laying and demanded that she produce his phone. *Id.* After the Individual's girlfriend produced the Individual's phone, she claimed that he threw the phone and yelled “this is what I think about you,” and subsequently pushed her into the bed while grabbing her throat. *Id.* The Individual's girlfriend represented that the Individual pulled out his pocket knife while holding her down on the bed, and that she had feared for her life. *Id.* The officer determined that the Individual was “very intoxicated” and arrested him. *Id.*

On October 24, 2018, the Individual spoke with a representative of the LSO and asserted that he and his girlfriend had argued after drinking, but that he had not “put [his] hands on her except to hold her off.” Ex. 6 at 1–2. The Individual indicated that he had consumed “two small bourbon mixed drinks” on the night of his arrest. *Id.* at 1. The Individual expressed that they had argued about his not spending enough time at home with his girlfriend, and that she had provided a different account to the police because “she likes drama and [] was angry.” *Id.* On January 7, 2019,

the LSO received documentation that the charges against the Individual had been dropped by motion of the prosecuting authority. Ex. 5 at 1–2.

On May 19, 2019, the Individual met with the DOE Psychiatrist for a clinical interview. Ex. 8 at 1. The Individual recounted the circumstances of his arrest to the DOE Psychiatrist and indicated that the precipitating argument concerned him not spending enough time at home. *Id.* at 5. The Individual reported that he consumed two mixed bourbon drinks and became intoxicated due to his low tolerance to alcohol. *Id.* at 6. The Individual admitted to having thrown his phone and broken a mirror in the argument but denied physically assaulting his girlfriend. *Id.* The Individual reflected that, in retrospect, he should have called his son and left when the argument escalated. *Id.* The Individual reported that his relationship with his girlfriend has become stronger since the incident. *Id.*

Regarding his alcohol consumption, the Individual reported that he consumed an average of two to four beers per month, and that he never consumed alcohol before driving or when he was scheduled to work on the following day. *Id.* The Individual indicated that he had last consumed alcohol three to four weeks prior to the clinical interview, at which time he drank two beers. *Id.* The Individual expressed that he would not have any problem discontinuing alcohol use if doing so was necessary to maintain his security clearance. *Id.* at 7.

The DOE Psychiatrist requested that the Individual undergo a Phosphatidylethanol (PEth) laboratory test immediately following the clinical interview. *Id.* at 8. The PEth test was positive for the PEth biomarker at a level of 111 ng/mL. *Id.* at 13. According to the DOE Psychiatrist, this test result was consistent with consuming moderate to heavy alcohol consumption during the week prior to the PEth test. *Id.* at 8. Accordingly, the DOE Psychiatrist inferred that the Individual had been untruthful in reporting his alcohol consumption levels during the clinical interview. *Id.*

On May 31, 2019, the DOE Psychiatrist issued his Report in which he concluded that the Individual binge consumed alcohol to the point of impaired judgment and met the diagnostic criteria for AUD, Moderate, under the *DSM-5*. *Id.* at 9. The DOE Psychiatrist recommended that the Individual demonstrate rehabilitation or reformation by attending Alcoholics Anonymous (AA) meetings, obtaining an AA sponsor, and undergoing periodic random alcohol tests. *Id.*

V. HEARING TESTIMONY

A friend of the Individual, who had known him since childhood, testified that he had always known the Individual to consume alcohol moderately. Tr. at 14–17, 19. The friend denied knowledge of the nature of the altercation between the Individual and the Individual’s girlfriend. *Id.* at 17. A co-worker of the Individual, who had known him since 2010, testified that he had no reason to believe that the Individual engaged in problematic drinking. *Id.* at 22–24. However, the Individual’s co-worker testified that he did not socialize with the Individual outside of work and had no knowledge of the Individual’s drinking habits. *Id.* at 23–24. Both witnesses testified that they believed that the Individual was honest, reliable, and trustworthy. *Id.* at 18, 25.

The Individual confirmed that he had consumed alcohol and argued with his girlfriend prior to his arrest in 2018, but denied that he had physically assaulted her. *Id.* at 29–30. The Individual reported

that he met with a substance abuse counselor, attended anger management classes, and participated in AA meetings to facilitate the dismissal of the Aggravated Assault charge. *Id.* at 31, 48. The Individual also reported that he had passed six breath alcohol tests at work since his meeting with the DOE Psychiatrist and was “willing to” take PEth tests in the future. *Id.* at 50. According to the Individual, he denied problematic alcohol consumption during his meetings with the substance abuse counselor because he did not “drink every day . . . [or] even drink every week.” *Id.* at 35. The Individual indicated that, as of the date of the hearing, he remained of the opinion that his alcohol consumption was not problematic. *Id.* at 54.

The Individual testified that he currently consumes alcohol occasionally and said that he might consume six to eight beers over six hours during a social gathering, as an example of his drinking habits. *Id.* at 33. He reported that he had last consumed alcohol approximately two or three weeks prior to the hearing. *Id.* at 45. The Individual testified that he believed that his consumption of whiskey had “caused the issue” with his girlfriend, and that he saw no reason to discontinue drinking beer because he had “never even had any altercation from, you know, just drinking a few beers.” *Id.* at 44.

The Individual denied that he had intended to deceive the DOE Psychiatrist about his drinking habits and asserted that the form of the questions posed by the DOE Psychiatrist confused him. *Id.* at 38. The Individual testified that the DOE Psychiatrist asked him “When was the last time you had any amount of alcohol?” and testified as to why he found that question confusing:

I’m sure it’s not the same where you guys are from, but from around here the word – that word ‘amount’ means a measurement. Like if you were to say, you know, ‘I went fishing today,’ ‘Well, did you catch anything to amount to anything,’ which means either a big one or quite a few.

Tr. at 38–39.

The Individual went on to testify that he had consumed six or seven beers at a cookout on the weekend prior to the clinical interview, but that he had not disclosed consuming those beers because he misunderstood the DOE Psychiatrist’s question. *Id.* at 39. The Individual explained that, to him, a “significant amount” of alcohol would have been twelve or sixteen beers in a sitting. *Id.* at 53. The Individual testified that he would be willing to fully abstain from alcohol if necessary to regain his security clearance, but opined that he “fe[lt] like that’s not fair, you know, being I’m not drinking at work or drinking before work or -- and I’m not doing anything unlawful.” *Id.* at 58.

The DOE Psychiatrist testified last, after observing the testimony of the other witnesses. The DOE Psychiatrist indicated that the Individual’s testimony that he consumed six or seven beers in a sitting several days prior to the PEth test explained the elevated PEth levels detected on the test. *Id.* at 66. The DOE Psychiatrist opined that, based on the Individual’s testimony during the hearing, the Individual continued to meet sufficient diagnostic criteria under the *DSM-5* to diagnose him with AUD and that the Individual binge consumed alcohol. *Id.* at 70–71, 73.³ The DOE Psychiatrist

³ However, in his testimony, the DOE Psychiatrist revised the severity of the Individual’s AUD from “Moderate” to “Mild.” Tr. at 70–71.

opined that, in light of the Individual's "self-deception" that consuming six to seven drinks in a sitting was not a "significant amount," he would not expect the Individual to succeed in controlling his problematic drinking until the Individual demonstrated a one-year period of abstinence from alcohol and that, as of the date of the hearing, the Individual had not demonstrated rehabilitation or reformation. *Id.* at 74, 77–78.

VI. ANALYSIS

A. Guideline E

The LSO's allegation that the Individual intentionally provided misleading information to the DOE Psychiatrist raises security concerns under Guideline E. Adjudicative Guidelines at ¶ 16(b). Three mitigating conditions under Guideline E are potentially applicable in this case. An individual may mitigate security concerns under Guideline E if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." *Id.* at ¶ 17(a). An individual may also mitigate security concerns under Guideline E if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." *Id.* at ¶ 17(c). In addition, an individual may mitigate security concerns under Guideline E if "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." *Id.* at ¶ 17(d).⁴

The Individual's explanation for failing to disclose to the DOE Psychiatrist that he consumed six or seven beers in a sitting mere days before the clinical interview is illogical. The Individual's idiosyncratic interpretation of the DOE Psychiatrist's question during the clinical interview concerning the last time that he consumed "any amount of alcohol" is unreasonable, and seems more likely to have been fabricated to justify the Individual's omission than a truly held belief. No reasonable person could interpret the phrase "any amount of alcohol" to mean twelve or more beers in a sitting, as the Individual testified at the hearing. Moreover, the Individual told the DOE Psychiatrist about an occasion on which he consumed two beers three to four weeks prior to the clinical interview. If the Individual had truly believed that the DOE Psychiatrist only intended for him to report occasions on which he consumed very large quantities of alcohol, I see no reason that he would have mentioned this occasion.

The Individual did not attempt to correct his omission until the hearing itself, and his explanation was unsatisfactory for the reasons noted above. Accordingly, I find that the Individual's efforts to correct the omission were neither prompt nor in good faith. *Id.* at ¶ 17(a). Moreover, the Individual's omission was not a minor one, and his attempt to justify the omission, rather than acknowledging that he intentionally omitted his most recent episode of drinking, casts significant doubt on his judgment and reliability and leads me to conclude that he is not unlikely to

⁴ The other mitigating conditions under Guideline E, concerning omission or concealment on the advice of counsel, allegations based on unsubstantiated information, reducing vulnerability to exploitation, manipulation, or duress, and disassociating from persons engaged in criminal activity, are not applicable to the facts of this case. Adjudicative Guidelines at ¶ 17(b), (e)–(g).

misrepresent derogative information about himself in the future. *Id.* at ¶ 17(c)–(d). For these reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline G

The Individual's alcohol-related incident away from work, the LSO's allegations that he has engaged in binge consumption of alcohol to the point of impaired judgement, and the DOE Psychiatrist's opinion that he met the diagnostic criteria for AUD under the *DSM-5* raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (c)–(d). An individual may mitigate security concerns under Guideline G if:

- (a) 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;
- (b) 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;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) 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).

The first mitigating condition under Guideline G is inapplicable because the Individual had not discontinued consuming alcohol as of date of the hearing, and testified that it was not unusual for him to consume six or more beers in a day on occasions when he consumed alcohol. *Id.* at ¶ 23(a). The Individual's insistence that his alcohol consumption was not problematic because he did not consume alcohol frequently, experience occupational impairment, or unlawfully operate a vehicle after drinking, despite knowing that the DOE Psychiatrist and LSO had raised concerns about his pattern of binge-consuming alcohol on the occasions on which he did drink, establishes that he has not acknowledged his pattern of maladaptive alcohol use. *Id.* at ¶ 23(b).

In addition to not modifying his pattern of problematic alcohol consumption, the Individual did not undergo the alcohol tests recommended by the DOE Psychiatrist or pursue an AA sponsor.⁵ Therefore, the other two mitigating conditions under Guideline G are inapplicable. *Id.* at ¶ 23(c)–

⁵ The Individual submitted as evidence several negative breath alcohol tests conducted at work and a blood ethanol test conducted on October 26, 2020. Ex. B; Ex. D. The tests show that the Individual had not consumed alcohol within a short period prior to the tests. They do not shed light on the Individual's drinking over a period of weeks, as would have the PEth tests recommended by the DOE Psychiatrist. The LSO's concerns relate to the volume of alcohol the Individual consumes when he drinks and his behavior on those occasions, not to the frequency of the Individual's alcohol consumption or his sobriety at work. Accordingly, the tests provided by the Individual do not address the security concerns, and I have assigned them minimal weight.

(d). For these reasons, I find that none of the mitigating conditions under Guideline G are applicable to this matter. Therefore, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E and G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals