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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 15, 2017)	Case No.:	PSH-17-0032
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Issued: August 4, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the 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.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (Adjudicative Guidelines), I conclude that the individual’s access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor in a position for which he holds a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the individual’s alcohol use. In order to address those concerns, the LSO summoned the individual for a personnel security interview (PSI) in January 2017. Following the January 2017 PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychiatrist (DOE psychiatrist).

On April 27, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to continue to hold an access authorization and that the LSO had suspended his security clearance. In

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.

an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline G (alcohol consumption) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. 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 individual presented the testimony of four witnesses and testified on his own behalf. The DOE Counsel presented the testimony of the DOE psychiatrist. The DOE submitted ten exhibits (Exhibits 1-10) into the record, and the individual tendered fifteen exhibits (Exhibits A-O). The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 restoring his 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.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

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 continued eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines, which 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. *See* Guideline G at ¶ 21.

In citing Guideline G, the LSO stated that it was relying upon the March 2017 written evaluation by the DOE psychiatrist. The LSO stated that the DOE psychiatrist had concluded that the individual met the diagnostic criteria for Alcohol Abuse set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*, without adequate evidence of rehabilitation or reformation. Additionally, the LSO alleged that the individual was arrested and charged with Driving Under the Influence (DUI) in November 2016 when his breath alcohol content registered .12, and he admitted that he had consumed two 16 ounce beers prior to the arrest. Furthermore, the LSO alleged that the individual acknowledged during the PSI that from mid-December 2016 to January 28, 2017, he consumed alcohol in spite of his being subject to an Order Setting Conditions of Release and Bond (Order) that required that he abstain from alcohol. Finally, the LSO alleged that the individual admitted during the psychiatric evaluation that he consumed alcohol up until February 21, 2017, the date of his court hearing on the DUI, despite being subject to the Order.³ I conclude that, under the circumstances, Guideline G was properly invoked.

IV. Findings of Facts

In mid-November 2016, the individual was arrested for Driving Under the Influence. Ex. 6 at 2. The individual was classified as a first-time offender, and a bond arraignment was set for later in the month. *Id.* As part of his conditions of release as set forth in the Order, the individual agreed “[n]ot to possess or consume alcohol or enter any liquor establishments.” *Id.* at 3. The next work day following the arrest, the individual reported the incident to his supervisor, and the incident was documented with DOE later that same week. *Id.* at 1.

In January 2017, the LSO conducted a PSI with the individual. Ex. 9. During the PSI, the individual stated that a trial on the DUI was scheduled for the end of February 2017. *Id.* at 26-27. The individual explained that as part of his conditions of release, he was to abstain from drinking for what he thought was approximately 20 days. *Id.* at 26. He stated that he abided by the conditions of release because he did not want to “break any laws or anything like that.” *Id.* The individual

³ The LSO made one additional allegation with regard to the individual's alcohol use; however, the DOE counsel requested that the charge be removed from the statement of security concerns, stating that it was erroneous and could not be supported by the agency. Tr. at 129.

then clarified that he began drinking again in mid-December 2016. *Id.* at 28-29, 48. He further indicated that two days prior to the PSI, he became intoxicated after drinking one beer. *Id.* at 62.

Following the PSI, the LSO referred the individual to the DOE psychiatrist for evaluation. The evaluation took place in March 2017. Ex. 7. In conjunction with the evaluation, the DOE psychiatrist ordered a blood test to evaluate the individual's blood for the presence of Phosphatidylethanol (PEth). In his report, the DOE psychiatrist explained that PEth "builds up in the RBC [Red Blood Cell] with repeated drinking episodes, and ... PEth can still be detected in the blood for about 28 days after alcohol consumption has ceased." *Id.* at 7. The individual's PEth was measured at 968 ng/mL (nanograms per milliliter), and according to the laboratory report 20 ng/mL reflects "moderate to heavy ethanol consumption." *Id.* at 12. The DOE psychiatrist reported that the individual's PEth results "gives strong medical evidence that [the individual] is drinking significantly more than he reported." *Id.* at 8.

During the evaluation, the individual informed the DOE psychiatrist that his DUI trial had been rescheduled and he continued to drink up until four days prior the evaluation. *Id.* at 6. The DOE psychiatrist determined that the individual met "only one criterion for the diagnosis of Alcohol Abuse" pursuant to the DSM-IV-TR. *Id.* at 1, 9. The DOE psychiatrist noted that he would consider the individual's disorder to be of "mild" severity; however, he stated that "of concern is [the individual's] high level of denial regarding his disorder...." *Id.* at 1. The DOE psychiatrist determined that in order to show adequate evidence of reformation and rehabilitation, the individual would need to abstain from alcohol and enter a treatment program of moderate intensity, such as Alcoholics Anonymous (AA) or individual alcohol counseling, for a period of one year. *Id.* at 10.

In March 2017, following the DOE psychiatrist's evaluation, the individual's DUI charge was dismissed for a lack of probable cause. Ex. A. In early April 2017, prior to receiving the April 27, 2017, Notification Letter, the individual became abstinent from alcohol. He additionally attempted to enroll in an intensive outpatient recovery program (IOP); however, he was not granted admission as the program determined, after an initial assessment, that he was not a candidate and did "not need an IOP." Ex. C. In May 2017, he enrolled in a one-year recovery program through his employer's Employee Assistance Program (EAP) and began outside counseling sessions one time per week. Ex. B, D. The EAP recovery program requires the individual to abstain from alcohol, engage in individual counseling, attend regular AA meetings one to three times per week, engage in monthly EAP follow-ups, and undergo urinalysis and breathalyzer tests, all of which have been negative for the presence of alcohol. Ex. B, E.

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 not be restored. I cannot find that restoring the individual's 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). The specific findings that I make in support of this decision are discussed below.

At the hearing, the individual testified that he stopped consuming alcohol in early April 2017, and that he intends to continue abstaining from consuming alcohol in the future. Tr. at 78-79. The individual explained that, following his arrest, he did not immediately abstain from alcohol because he did not feel that his alcohol use was a problem, but his choice to drive after consuming alcohol had negatively impacted his life. *Id.* at 108-110. The individual stated that he abstained from alcohol, as part of his conditions of release, up until his bond arraignment in mid-December 2016, but resumed using alcohol following the bond arraignment. *Id.* at 76-77. He explained that the conditions of release were unclear as to how long they were to be followed, and he had no previous experience with the DUI process. *Id.* at 112, 119-120, 175.

With regard to the DOE psychiatrist's diagnosis, the individual stated that he did not feel that the diagnosis was accurate. *Id.* at 101. He indicated that he does not feel he has a problem because alcohol had not impacted his life or affected his relationships, prior to the DUI. *Id.* at 101, 103. Nonetheless, the individual explained that he has been engaging in Rational Emotive Behavior Therapy in his weekly therapy sessions with his counselor and has found that this method of therapy has replaced the anxious feelings about the impacts that becoming abstinent would have on his social life. *Id.* at 89. He also stated that the counseling has helped him to adapt to being abstinent. *Id.* at 104. While the individual indicated that he attended one AA session "right away," he felt it was "extreme" for him, and he chose to continue with the EAP and his counselor instead. *Id.* at 90-91.

Finally, the individual explained that his abstinence has had only a minor, if any, impact on his social life. *Id.* at 115. He additionally stated that he has noticed several benefits to abstaining from alcohol, such as reaching his fitness goals and saving money. *Id.* at 93. He also stated that he has shared his experiences related to this administrative proceeding with his friends and has tried to serve as an example to them. *Id.* at 95, 123.

To support his reports of abstinence and to speak to his character, the individual called three witnesses: his supervisor, his girlfriend, and a family friend. *Id.* at 32, 45, 56. These witnesses testified to the individual's honesty, sincerity, and dependability. *Id.* at 36, 40, 47, 58. They additionally affirmed their knowledge of the individual's intention to abstain from alcohol. *Id.* at 41, 47, 60. The individual's girlfriend and family friend confirmed that the individual is comfortable with his abstinence, and his girlfriend stated that he refuses alcohol if it is offered to him. *Id.* at 50, 54, 64.

The counselor testified that the individual voluntarily came in May 2017 to receive counseling to address issues related to his DUI, and that they have been meeting weekly since that time. *Id.* at 12, 14. The counselor indicated that the individual has been an eager and thoughtful participant. *Id.* at 21. The counselor stated that he explored the individual's alcohol use and problems with his alcohol use, and he felt the individual was honest about his alcohol use. *Id.* at 16. He indicated that he did not believe the individual had an alcohol use or abuse disorder and solely diagnosed him with an adjustment disorder; however, he clarified that he did not perform any diagnostic tests. *Id.* at 14, 20, 25, 27. The counselor explained that he utilized Rational Emotive Behavior Therapy in his sessions with the individual to give him the most options to improve his life. *Id.* at 16-17, 20. The counselor clarified that he had not read the DOE psychiatrist's evaluation because he did not want to be biased against the individual. *Id.* at 25-26. He also stated that he was not aware of the

individual's PEth test results. *Id.* at 29. Ultimately, the counselor stated that the individual's prognosis was "very good," and he felt that the individual "truly wants to work at his full capacity" and is motivated to get his clearance back. *Id.* at 17.

The DOE psychiatrist testified after listening to the testimony of all of the other witnesses. *Id.* at 129-131. He explained that he had not heard anything that would change his diagnosis. *Id.* at 131. The DOE psychiatrist indicated that while the individual "was right on the borderline" of meeting the criteria for Alcohol Abuse, the results of the highly elevated levels shown on the PEth test "tipped" him to make the diagnosis. *Id.* at 159. The DOE psychiatrist stated that the individual has a "fair" prognosis; however, he expressed concern that the individual was minimizing his alcohol use. *Id.* at 155. The DOE psychiatrist additionally stated that the individual has not shown adequate evidence of reform and rehabilitation at this time and noted that the individual was still in "early sobriety," having abstained from alcohol for only three months. *Id.* at 135, 151.

Considering these facts, for the reasons explained below, I conclude that the security concerns raised under Guideline G have not been sufficiently mitigated.

A. Conditions of Release

It is undisputed that following the individual's arrest for DUI, one of his conditions of release was to abstain from the consumption of alcohol. Ex. 6 at 3. The individual admitted that he consumed alcohol in the period of time following his bond arraignment and prior to his trial on the DUI. Tr. at 76-77. Failing to follow a court order regarding abstinence may serve as a disqualifying condition to the restoration of a security clearance. Guideline G at ¶ 22(g). However, I find that the individual's testimony regarding his belief that he felt he was abiding by the conditions of release in abstaining from alcohol up until his bond hearing to be credible. The individual was a first time offender and there is no indication in the record that the individual had any previous experience with the criminal court system or court orders regarding conditions of release. Ex. 6 at 2. Furthermore, after examining the Order's conditions of release, there is no clear indication as to the timeline for which these conditions apply. *Id.* at 3. In fact, the only dates on the Order are the individual's birthdate, the date the individual signed the Order's conditions of release, and the bond arraignment date. *Id.* Therefore, I determine that the individual's failure to abide by the conditions of release up until his trial date occurred under such unusual circumstance that it is unlikely to recur and does not cast doubt on the individual's good judgment. *See id.* at ¶ 23(a).

B. DOE Psychiatrist's Diagnosis of Alcohol Abuse

The individual has been diagnosed with Alcohol Abuse by a duly qualified psychiatrist. *See id.* at ¶ 22(d). While the actions the individual has taken in the past three months, including his abstinence, counseling, and enrolling in the EAP alcohol treatment program, are commendable, he has not yet established a pattern of abstinence in accordance with the DOE psychiatrist's recommendations. *See id.* at ¶ 23(d). The individual is taking actions to overcome any problems related to his alcohol use; however, he does not acknowledge that he has an alcohol-related problem. *See id.* at ¶ 23 (b). The individual's PEth test results do not support his contention that he does not have an alcohol-related problem. The test indicates that a "moderate to heavy" drinker would have a PEth level in excess of 20 ng/mL. Ex. 7. The individual's results were far beyond the 20 ng/mL, reaching 968 ng/mL. *Id.* While the PEth test report cautions that the test is

insensitive to incidental or unintentional exposure to ethanol, the individual provided no argument or evidence in this regard, and the burden is on the individual to convince the DOE that granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the nation interest.” 10 C.F.R. § 710.27(d).

Although I recognize that the individual’s counselor did not make an alcohol-related diagnosis, I give less weight to the counselor’s testimony given that the counselor admittedly did not conduct any tests, did not read the DOE psychiatrist’s report, and was unaware of the individual’s PETH test results. After seeing the evidence and listening to the testimony presented at the hearing, the DOE psychiatrist indicated that his opinion regarding the state of the individual’s reform or rehabilitation has not changed since issuing the report. *See id.* at ¶ 22(d). I further find that the DOE psychiatrist’s opinion is consistent with the witness testimony and my observations in this case.

C. DUI

Incidents, such as driving while under the influence, can serve as a disqualifying condition to the restoration of a security clearance. *Id.* at ¶ 21(a). While the individual’s DUI was dismissed for lack of probable cause, there is evidence in the record that at the time of his arrest, the individual had a blood alcohol level of .12. Ex. A; Ex. 6 at 5. It is indeed commendable that the individual has abstained from alcohol, stated his intent to abstain in the future, enrolled in his employer’s EAP one-year alcohol recovery program, engaged in therapy, and is taking regular breathalyzer and urinalysis tests, Ex. B, D, E.. Ex. 6 at 2; Tr. at 89. However, as explained above, the individual still has a diagnosis of Alcohol Abuse without adequate reformation or rehabilitation. *See id.* at ¶ 22(d). As such, I cannot determine that the DUI occurred under such unusual circumstances that it unlikely to recur. *See id.* at ¶ 23(a). Thus, I conclude that the security risk had not been sufficiently mitigated.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline G. After considering all 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 associated with that guideline. I therefore cannot find that restoring the individual’s access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should not restore the individual’s access authorization at this time.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: August 4, 2017