

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

In the Matter of:	Personnel Security Hearing)	
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Filing Date:	August 9, 2017)	Case No.: PSH-17-0052
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Issued: November 8, 2017

Administrative Judge Decision

Janet R. H. Fishman, 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, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully 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*, effective June 8, 2017 (Adjudicative Guidelines), I conclude that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization. A holder of access authorization is required to report certain occurrences and, in November 2016, the individual properly self-reported that he had been arrested and charged with driving while intoxicated (DWI). *See* Exhibit 8. As a result of this information, the local security office (LSO) conducted a personnel security interview (PSI) with the individual in February 2017. *See* Exhibit 11. The PSI did not resolve the security concerns arising with respect to the individual’s alcohol consumption and, as a result, the LSO referred the individual to a DOE consultant psychologist (DOE psychologist) for an evaluation. *See* Exhibit 9.

In April 2017, the individual was evaluated by the DOE psychologist. *See* Exhibit 9. Since neither the PSI nor the psychological evaluation resolved the security concerns arising with

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.

respect to the individual's alcohol consumption, the LSO informed the individual in a letter dated June 29, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information raised one or more security concerns under "Guideline G: Alcohol Consumption" of the Adjudicative Guidelines (Guideline G).² See Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. See Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 12 numbered exhibits (Exhibits 1-12) into the record and presented the testimony of one witness, the DOE psychologist. The individual, represented by counsel, introduced 7 lettered exhibits (Exhibits A – G) into the record and presented the testimony of five witnesses, including the individual and his counselor. The exhibits will be cited in this 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.³

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).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her 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 or her 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). Thus, an individual

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

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 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. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited Guideline G as the basis for suspending the individual's security clearance. 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. *See* Adjudicative Guidelines at Guideline G ¶ 21. With respect to Guideline G, the LSO relied upon the April 2017 written evaluation by the DOE psychologist which concluded that the individual has been a habitual user of alcohol and has been found to frequently binge drink to the extent that his judgment is impaired. Ex. 1 at 1; Ex. 9 at 6. Additionally, the LSO cited, *inter alia*, that the individual: (1) had been arrested and charged in November 2016 with DWI; (2) had been intoxicated on numerous occasions between 1998 and 2016; (3) had operated a motor vehicle while under the influence of alcohol 15 to 20 times prior to November 2016; and (4) had experienced two blackout episodes. Ex. 1 at 2.

In light of the information available to the LSO, the LSO properly invoked Guideline G.

IV. Findings of Fact

The individual does not dispute the facts alleged in the Notification Letter and, at the hearing, stipulated as to the factual accuracy of the summary of security concerns attached to the Notification Letter. Tr. at 10. I have carefully considered the totality of the record, including the individual's stipulation, in reaching the findings of fact set forth below.

The individual was charged and arrested for DWI in 2016. Ex. 1 at 1; Tr. at 9. Following the 2016 arrest, the individual attended an outside resource for an alcohol assessment, and the individual was diagnosed with a "mild form of Alcoholism." Ex. 4 at 1.

As a result of that diagnosis, the individual commenced an Intensive Outpatient Program (IOP) for alcohol treatment approximately three weeks after his 2016 arrest for DWI. *Id.* The IOP encompassed twenty-four, two-and-a-half hour sessions, covering a six week period. *Id.* He completed the IOP on schedule in January 2017 and, thereafter, has

complied with the IOP's aftercare recommendations of participating in weekly aftercare sessions. *Id.*

In April 2017, the individual was evaluated by the DOE psychologist, who concluded that the individual was a habitual or binge user of alcohol to the point of impaired judgment. Ex. 9 at 6. While acknowledging the individual's alcohol treatment and four months of alcohol abstinence as of the date of the psychological evaluation, the DOE psychologist opined that the fact that the individual did not consider his binge drinking was a personal problem was concerning. *Id.* at 6. He opined that the individual should maintain abstinence for a minimum of a 15-month period, the length of his probation. *Id.* at 6. The DOE psychologist concluded that the individual needed "to demonstrate sufficient control over his desire to drink by abstaining during [his] 15-month [probationary] period." *Id.* at 7.

As of the date of the hearing, the individual had been abstinent from alcohol for 11 months and continued to be compliant with the aftercare recommendations of his IOP. Tr. at 12, 13, 52. In addition to the aftercare, the individual has continued monthly counseling. *Id.* at 52. The individual testified as to his present intent to continue, for an indefinite period of time, both his abstinence, his weekly participation in one IOP aftercare session, and his individual counseling. *Id.* at 12, 20, 33.

At the hearing, both the individual's counselor and the DOE psychologist testified to the adequacy of the individual's rehabilitation and reformation. *Id.* at 58, 59, 82. The individual's counselor opined that the individual is "very cooperative, and open, seemingly genuine. . . . forthcoming." *Id.* at 52. She continued that the DWI and IOP enlightened the individual. *Id.* at 53. She stated that he has a viable plan in place, which includes: (1) abstinence; (2) aftercare; (3) changing the people that he has historically socialized with, and the places that he has historically done so; and (4) adding new activities. *Id.* at 54. She concluded that he has been rehabilitated and reformed, and that he has a good prognosis. *Id.* at 52, 59.

The DOE psychologist opined that the individual was not "addicted to alcohol." *Id.* at 61. At the time of the evaluation, the DOE psychologist was concerned that the individual did not believe that his binge drinking was a personal problem. *Id.* at 77; Ex. 9 at 6. At the hearing, the DOE psychologist testified that the individual finally "seems to have understood that he did have . . . a problem." Tr. at 78. He concluded that the individual has a very low risk of relapse, citing that the individual has the strength of character to not consume alcohol because it is important to him and to the DOE. *Id.* at 81.

Finally, the individual's two character witnesses testified that they have seen a change in the individual's alcohol consumption since his DWI. *Id.* at 37, 45. Both asserted that the individual has only ordered water or a soft drink when they go out together. *Id.* They both also stated that the individual does not have any alcohol in his house. *Id.* at 42, 47. They concluded that he is open and honest, and very reliable in his interactions with them, and that he has been forthright about his DWI. *Id.* at 36, 39, 43, 46.

The individual's supervisor also testified that the individual had been open and honest with her about his DWI. *Id.* at 68. She concluded that he is reliable, responsible, and dedicated. *Id.*

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)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I 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.

A. Mitigating Evidence

The individual disputed neither the facts alleged by the LSO in the Notification nor the opinion of the DOE psychologist that he is a habitual user of alcohol and frequently binge drinks to an extent that is likely to impair his judgment. Instead, he argues that he has sufficiently mitigated the Guideline G security concerns noted by the LSO through: (1) his abstinence from alcohol; (2) his completion of an IOP; (3) his compliance with the IOP's aftercare recommendations; (4) his monthly counseling sessions; and (5) his future intent to continue such abstinence, aftercare, and counseling.

B. Administrative Judge Evaluation of Evidence

As an initial matter, I note that legitimate security concerns exist as a result of the individual's consumption of alcohol. The individual's DWI arrest in 2016 is disqualifying. Additionally, the DOE psychologist stated that the individual is a habitual or binge consumer of alcohol to the point of impairment. Ex. 9 at 6. The individual does not dispute the diagnosis. Tr. at 10. Therefore, the issue before me is whether the individual has sufficiently mitigated the security concerns arising from his alcohol consumption.

The individual credibly testified that he has been abstinent from alcohol since his DWI arrest in November 2016. *Id.* at 17. This testimony was corroborated by the testimony of the individual's counselor and his friends. Tr. at 37, 41, 42, 45, 54. The DOE psychologist testified as the final witness at the hearing, having been present during the testimony of all

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

other witnesses, that as of the date of the hearing the individual had established an appropriate pattern of abstinence from alcohol. *Id.* at 79. *Cf.* Adjudicative Guidelines at Guideline G ¶ 23(b) (mitigation of alcohol related security concerns possible where an individual acknowledges his alcoholism, evidences actions taken to overcome the problem, and has established a pattern of abstinence).

The individual's abstinence is supported by his having completed an IOP, and his continuing participation (for nine months, as of the date of the hearing) in a weekly aftercare session offered by his IOP provider, and monthly individual counseling. Tr. at 12, 13; Ex. D; Ex. E. The documentation from his IOP and the testimony of his counselor both support that the individual's participation in these sessions is active and meaningful. Tr. at 52; Ex. D; Ex. E at 1. The individual credibly testified that his present intent is to abstain from alcohol at least until his probation is completed on the DWI charge, and to continue his participation in both the IOP's aftercare program and counseling indefinitely. Tr. at 20. The DOE psychologist testified that the testimony presented at the hearing demonstrated that the individual continues to have growing insight into his alcohol problem. *Id.* at 77. Both he and the individual's counselor opined at the hearing that the individual had evidenced adequate rehabilitation and reformation of his habitual and binge consumption of alcohol, and has a favorable prognosis. *Id.* at 58, 59, 79, 82. *Cf.* Adjudicative Guidelines at Guideline G ¶ 23(d) (mitigation of alcohol related security concerns possible where an individual has completed outpatient counseling along with any aftercare, demonstrated a clear and established pattern of abstinence, and has received a favorable prognosis by a duly qualified medical professional).

For the reasons set forth above, I find that the individual has resolved the security concerns associated with Guideline G arising with respect to his alcohol consumption.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline G. 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 have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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

Date: November 8, 2017