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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: September 7, 2017	)	Case No.: PSH-17-0064
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Issued: December 26, 2017

**Administrative Judge Decision**

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “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 *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 have determined that the individual should not be granted an access authorization.

**I. Background**

The individual is employed by a DOE contractor that requested a security clearance on his behalf. While processing that request, the Local Security Office (LSO) obtained information about the individual that indicated that he had over \$15,000 in unpaid collection accounts and had a history of criminal activity dating from 1999 through 2008. Because the criminal activity included three alcohol-related arrests in 2000, 2003, and 2005, the LSO had the individual evaluated by a DOE consultant psychologist, who determined that the individual met the *Diagnostic and Statistical Manual of the American Psychiatric Association, 4<sup>th</sup> Edition TR (DSM-IV-TR)*, criteria for Alcohol Dependence and Alcohol Abuse, and the *Diagnostic and Statistical Manual of the American Psychiatric Association, 5<sup>th</sup> Edition (DSM-5)*, criteria for Alcohol Use Disorder.

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<sup>1</sup> 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.

On August 1, 2017, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines F, G, and J of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and on September 27, 2017, I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of one witness, his wife, and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the individual. In addition to the testimonial evidence, the LSO tendered 12 numbered exhibits into the record (Exhibits 1-12). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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 regulations require me, 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). 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 (9<sup>th</sup> 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 the individual’s 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. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited three bases for administrative review of the individual’s request for access authorization, Guidelines F, G, and J. Guideline F addresses “failure or inability to live within one’s means, satisfy debts, and meet financial obligations [which] may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, [and] can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” Adjudicative Guidelines, Guideline F at ¶ 18. In support of its security concerns

under Guideline F, the LSO relied on the following information, which the LSO obtained through credit reports, from the individual's responses on a Questionnaire for National Security Positions he completed in March 2016 (QNSP), and from his responses during a March 2017 personnel security interview (PSI): eight unpaid collection accounts totaling \$15,715 and statements that he has not started to pay any of those debts, has not contacted any of the creditors, and does not intend to take any action on them until he is "financially comfortable." Ex. 1 at 1-2.

With respect to Guideline G, it is well established that that 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. Adjudicative Guidelines, Guideline G at ¶ 21. As bases for invoking Guideline G, the Notification Letter cited to the DOE psychologist's conclusions that the individual meets the DSM-IV-TR's criteria for Alcohol Dependence and Alcohol Abuse and the DSM-5 criteria for Alcohol Use Disorder, as well as the individual's own statements regarding three alcohol-related arrests in 2000, 2003, and 2005. Ex. 1 at 2.

Finally, the security concern expressed in Guideline J relates to criminal activity, which, by its very nature, creates doubt about a person's judgment, reliability, and trustworthiness, and calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines, Guideline J at ¶ 30. As evidence of its concern under this Guideline, the LSO enumerated 12 incidents of criminal activity dating from 1999 to 2008, three of which were identified as alcohol-related. Ex. 1 at 3-4.

These allegations adequately support the invocation of Guidelines F, G, and J, and they raise serious security concerns.

#### **IV. Findings of Fact**

Between the ages of 18 and 24, the individual was arrested nine times, cited for littering and for disorderly conduct, and was issued a warrant for his arrest for failing to comply with sentencing terms imposed for an earlier offense. The reasons for the arrests, the latest of which occurred in 2005, ranged from a firearm offense to breaking and entering, including disturbing the peace, disorderly conduct, public intoxication, driving under the influence of alcohol, and possession of marijuana. Of those arrests, three were alcohol-related: driving under the influence at age 19, public intoxication at age 22, and assault with a deadly weapon (while intoxicated) at age 24. The individual did not challenge the accuracy of the records regarding any of these infractions, though he stated during the hearing that he no longer recalled a number of them. Tr. at 80-89. He and his wife each testified, however, that a November 2008 citation for disorderly conduct listed in the Notification Letter was not correct; he was not present in the city where the offense allegedly occurred, and contended that someone else must have used his identity when confronted by the police. *Id.* at 15-17, 77-79.

The individual married in 2006 and is now the father of two children. His wife testified that while they both enjoyed partying when they were younger, she had no concerns about his alcohol consumption until his 2005 arrest, even though he was then drinking on a daily basis. *Id.* at 19, 28. Complying with a condition of probation arising from that arrest, the individual stopped drinking

for five years, and remained abstinent until 2012. *Id.* at 63. Since he resumed consuming alcohol in 2012, he drinks only on weekends. *Id.* at 21, 70. His wife testified that he is now more attentive to his family and, in her opinion, keeps his alcohol consumption under control, but she recognizes that alcohol will always be a problem for him to manage. *Id.* at 26-28. She testified that since the arrests, her husband has matured, and takes seriously his responsibilities to his family, noting that he has had no problems with the law since his first child was born in 2006. *Id.* at 32-33. The individual stated that he plans to continue to reduce his alcohol consumption. *Id.* at 72, 76.

The individual's financial difficulties mirror the nation's economic downturn of the last decade. He was regularly employed until 2008, when he was laid off, at which time his wife became the sole provider for the family. Before the layoff, the family was financially comfortable, and he had bought himself an expensive motorcycle. After the layoff, they were living from paycheck to paycheck, and paying the monthly loan payment on the motorcycle became a hardship; though he held onto the motorcycle for as long as possible, eventually he turned it in to the lienholder. He nevertheless owes the amount of the loan, which constitutes nearly \$14,000 of the total outstanding debt of \$15,715. *Id.* at 36-37, 39; Ex. 1. Now that they have had two incomes for some time, they are in the position to start paying their outstanding debts. *Id.* at 103. They are, however, constructing a home and, until it is outfitted sufficiently for them to move into, they are directing all of their available funds toward that project. They will focus on the outstanding debts after they inhabit their new home. Tr. at 38, 41, 101. In order to avoid falling into debt in the future, they are committed to living as if they have only one income, while saving the other income as a cushion against the unexpected. *Id.* at 40-41.

The DOE psychologist conducted an evaluation of the individual in May 2017. After reviewing the individual's personnel security file, interviewing him, and interpreting the answers he provided to a number of standardized psychological tests, the DOE psychologist concluded that the individual meets the DSM-IV-TR criteria for alcohol abuse and alcohol dependence in the past, but also meets the DSM-5 criteria for alcohol use disorder currently. Ex. 6 at 15-16. His conclusion was based in part on the individual's report of his alcohol consumption at the time of the evaluation: 6 to 12 beers and 2 to 3 shots of whiskey or scotch when he drinks, which he stated to be one or two days per weekend, and two weekends out of the month. *Id.* at 4. At the hearing, the DOE psychologist testified that he had understood from the testimony of the individual and his wife that the individual was now drinking less than he had been at the time of the evaluation. Tr. at 120. While acknowledging that the individual is now drinking more responsibly than before, the DOE psychologist expressed his opinion that the individual is still drinking excessively when he does drink. *Id.* at 130. He observed that people with alcohol problems should not be drinking at all, and should be receiving some kind of treatment. *Id.* at 133. Because the individual was continuing to drink, the DOE psychologist was not willing to state that the individual had shown adequate evidence of rehabilitation or reformation from his alcohol disorder. *Id.* at 134.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual 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 should not be granted a security clearance at this time. I cannot find that granting 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. Guideline F

Financial difficulties form the basis of the LSO's Guideline F concerns. Outstanding debts paint a picture of failure or inability to satisfy debts, which could render a person susceptible to engaging in illegal or otherwise questionable acts to generate funds. Adjudicative Guidelines, Guideline F at ¶ 18. Apart from the largest one by far—the note on the motorcycle—the individual has no recollection of how the debts were incurred, but testified at the hearing that he acknowledges them and can now afford to pay them. Nevertheless, he has not paid any of them, stating that he wants to pay them all in full at once, and lacks the finances to do so, in large part because he is using all available funds to complete his house. Tr. at 99-101.

Having reviewed the conditions presented in Guideline F of the Adjudicative Guidelines that could mitigate security concerns related to financial irresponsibility, I find that some of these conditions apply to the facts of this case: the individual's behavior that led to many of these concerns happened several years ago, as a result of loss of employment. Adjudicative Guidelines, Guideline F at ¶ 20(a), (b). Moreover, the individual and his wife appear to live within their means now, and are current on their expenses. Tr. at 105, 110. I question the individual's judgment, however, regarding the priorities he is imposing on the use of the funds he currently has available to him. He is well aware that the LSO has expressed its concern about the lingering debt burden that he is shouldering, and that successfully addressing that concern is an important factor in the decision to grant or deny his security clearance. Instead, however, the individual has adopted a plan that entails delaying repayment of these debts until construction on his house has progressed and then, until he has amassed enough money to pay off all the outstanding debts in full at once. Because he has not yet addressed his debts and has not convinced me that they will be addressed at a specific time in the near future, I find that the individual has not resolved the LSO's concerns under Guideline F.

### B. Guideline G

The LSO's Guideline G security concerns revolve around the individual's long-time use of alcohol that has led to frequent intoxication over the years. Certainly, when an individual is intoxicated, his good judgment is challenged, and his reliability and trustworthiness become questionable. The individual now drinks far less than he did when he was younger, particularly before his 2005 arrest. Following a period of abstinence required by his probation, he resumed drinking, but in lesser amounts and only on some weekends. The DOE psychologist expressed his opinion, with which

I agree, that the individual is taking steps in the right direction to reduce his use of alcohol. Nevertheless, even after hearing testimony that the individual had further curtailed his alcohol consumption following the evaluation, the psychologist determined that the individual had not yet achieved rehabilitation or reformation from his alcohol use disorder, primarily because he continues to consume alcohol and has not sought treatment. In light of the DOE psychologist's professional assessment of the individual's current status with respect to alcohol use, I find that the individual has not resolved the LSO's concerns under Guideline G.

### **C. Guideline J**

Criminal activity raises security concerns under Guideline J. An individual who is unable or unwilling to comply with laws, rules, and regulations is a risky choice to entrust with the handling of classified information, which requires strict adherence to its own set of laws, rules, and regulations. The individual and his wife each testified credibly that the 2008 citation for disorderly conduct was incorrectly attributed to the individual. Discounting that offense, the individual's criminal activity, while substantial, ended when he was 24 years old. In the ensuing 12 years, he got married, has had two children, and has settled down to a life of work and domesticity. At the hearing, he and his wife credibly presented themselves as a team, united to build a secure life for themselves and their family. Both emphasized that he is a different person now from the one he was as a young, unmarried man without responsibilities. Tr. at 32, 90-92. I find that one of the mitigating factors regarding Guideline J applies under these circumstances: "so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicative Guidelines, Guideline J at ¶ 32(a). Accordingly, I find that the individual has resolved the LSO's concerns under Guideline J.

## **VI. Conclusion**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guidelines F, G, and J of the Part 710 regulations. I further find that, while the individual has presented sufficient evidence to resolve the LSO's concerns under Guideline J, he has not succeeded in fully resolving the concerns raised under Guidelines F and G. Therefore, I cannot conclude that granting the individual's 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 grant an 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.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: December 26, 2017