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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 14, 2017) Case No.: PSH-17-0065
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_____)

Issued: January 3, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX XXXX (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be granted.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In March 2017, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol-related arrests and his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in June 2017 and memorialized her findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Abuse. The DOE psychologist further concluded that the individual is a habitual or binge consumer of alcohol to the point of impaired judgment.

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.

In August 2017, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one or more security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) 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).

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony. The DOE Counsel called one witness, the DOE psychologist. Both the DOE and the individual submitted a number of written exhibits (Ex.) prior to the hearing.

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 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 denial"); *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 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 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 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 in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, there are various security concerns under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. To support Guideline G, the LSO cites the DOE psychologist's diagnosis of Alcohol Abuse, the individual's alcohol use, and the individual's alcohol-related arrests and incidents. As for Guideline J, the LSO cites the individual's three alcohol-related arrests. *See* Ex. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Guidelines G and J. First, with respect to Guideline G, the excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G. Second, with respect to Guideline J, criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

IV. Findings of Fact

The individual acknowledged a history of alcohol use beginning at approximately 14 years of age. Ex. 4 at 9. According to the individual, alcohol consumption was prevalent in the town in which he grew up. *Id.* From ages 14 to 18, the individual stated that he consumed alcohol socially on Friday and Saturday nights. *Id.* The individual stated that he drank alcohol at various periods, but stated that he had significant periods of time when he was abstinent from alcohol. *Id.* He stated that he started to drink more sometime in 2015 when marital problems and symptoms of Posttraumatic Stress Disorder began to emerge. *Id.* He acknowledged that he often drank to help him fall asleep and relax during this time period. *Id.*

The individual acknowledged that he has been involved in a number of alcohol-related incidents. On December 24, 2006, the individual was arrested and charged with Voluntary Manslaughter. Ex. 1. Although he was acquitted of the charges, he admitted that prior to the incident, he consumed approximately three beers over an unrecalled amount of time. *Id.* In December 2013, the individual was involved in a verbal altercation while at a Christmas party. He admitted that prior to the altercation, he may have felt "buzzed" but he could not recall the amount of alcohol he consumed. *Id.* Again, in February 2014, the individual was arrested and charged with Driving While Intoxicated (DWI). He admitted that prior to the arrest, he consumed approximately two to three 12 ounce beers. *Id.* He further admitted that his breathalyzer results registered at .09. On December 13, 2015, the individual was arrested and charged with Corporal Injury to Spouse after an altercation occurred between him and his wife the day before. He admitted that he consumed wine prior to the incident. *Id.* Most recently, on February 18, 2017, the individual was arrested

and detained for Public Drunkenness. He admitted that prior to the arrest, he consumed three 20 ounce beers over a two hour period. *Id.* During his March 2017 PSI, the individual admitted that beginning in December 2016, until his arrest in February 2017, he would drink to excess almost every day, consuming two to three drinks during the weekdays. He further admitted that he would consume 12 drinks over three to four hours on the weekend. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On June 5, 2017, the DOE psychologist evaluated the individual. In her Report, she concluded that the individual meets the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)* criteria for Alcohol Abuse and the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* criteria for Alcohol Use Disorder, without adequate evidence of rehabilitation or reformation. The DOE psychologist further concluded that the individual is a habitual or binge consumer of alcohol to the point of impaired judgment. *Id.*

V. Analysis

I have thoroughly considered the record in 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)² and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be granted. Based on the facts in this record, I 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.

The individual does not dispute the DOE psychologist's diagnosis that he suffers from Alcohol Abuse/Alcohol Use Disorder. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

A. Evidence of Rehabilitation and Reformation

During the hearing, the individual testified about his alcohol use since his February 2017 arrest. Transcript of Hearing (Tr.) at 8. He testified that since his 2017 arrest, he has taken a number of steps towards rehabilitation. *Id.* The individual testified that he has been actively participating in Alcoholics Anonymous (AA) and completed a two-month outpatient therapy program, participating in group and individual sessions. *Id.*, Ex. A. He further testified that he has also sought support through his employer's Employee Assistance Program (EAP), attending five sessions with a counselor. *Id.* According to the individual, he feels "great" about not drinking, and testified that he has abstained from alcohol since February 18, 2017. *Id.* at 9. He testified that

² 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.

he has recently converted to Buddhism, and that the usage of alcohol no longer fits with his lifestyle. The individual stated that since abstaining from alcohol, he has seen a number of improvements in his life: most importantly, he testified he was awarded the primary and physical custody of his son based on his fitness as a caregiver. *Id.* The individual testified that he has also gained insight through his participation in the EAP and AA, noting that he has learned to recognize the “triggers” associated with alcohol consumption. *Id.* at 11. He stated that he has removed himself from situations where he would be tempted to consume alcohol. *Id.* Finally, the individual testified that he has lost 35 pounds since abstaining from alcohol and that his thinking is clearer now. His intentions are to completely abstain from alcohol in the future. *Id.* at 41, 42.

In her June 2017 Report, the DOE psychologist noted that the individual had abstained from alcohol since February 18, 2017, and that he reported significant participation in AA meetings, as well as reported working with an AA sponsor on a regularly basis since his abstinence. However, at the time of her evaluation, she recommended that the individual complete an outpatient alcohol program to strengthen his rehabilitation. Additionally, the DOE psychologist concluded that the individual needed to demonstrate continued abstinence and attendance at AA meetings for approximately two to three more months in order to establish adequate reformation. Ex. 4 at 21. After listening to all of the testimony at the hearing before testifying herself, the DOE psychologist opined that the individual is adequately rehabilitated and believes that the individual’s prognosis is very good. *Id.* at 44. She further noted that the individual has followed all of her recommendations and believes that he is in a very solid position to maintain his recovery and make healthy choices. *Id.*

B. Administrative Judge’s Evaluation of the Evidence

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).³ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has a high probability of maintaining abstinence and has achieved adequate rehabilitation and reformation at this time. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns about alcohol consumption. *See* Adjudicative Guideline G, ¶ 23. In this case, the individual has adequately resolved the security concerns for the following reasons: (1) he has established that his behavior occurred under unusual circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness or good judgment; (2) the individual has acknowledged his alcohol problem, and has established a pattern of responsible use having achieved nine months of abstinence as of the date of the hearing; (3) individual is currently participating in counseling sessions, and has demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, and has received a favorable prognosis by a duly qualified medical professional; and (4) the DOE psychologist has opined that the individual has a high probability of success of remaining completely abstinent. *Id.* For these reasons, I find that the individual has sufficiently resolved the DOE’s security concerns under Guideline G.

C. Guideline J: Criminal Conduct

³ Decisions issued by OHA are available on the OHA website located at www.energy.gov/oha.

The key issue under Guideline J is whether the individual brought forth sufficient evidence to demonstrate that he is reliable and trustworthy. *See* Adjudicative Guideline J, ¶ 30. Under Guideline J, conditions that may mitigate security concerns include that “it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment” and “there is evidence of successful rehabilitation.” Guideline J at ¶ 32(a) and (d).

In this case, the individual’s criminal conduct was directly related to his alcohol use. As stated above, after listening to the hearing testimony, the DOE psychologist opined that the individual has a very good prognosis and a high probability of maintaining his recovery. In light of the DOE psychologist’s current prognosis for the individual as well as the individual’s abstinence and evidence of successful rehabilitation, I am convinced that the individual’s behavior with respect to his alcohol use are unlikely to recur or do not cast doubt on his reliability, trustworthiness or good judgment. Therefore, I find that the individual has resolved the security concern under Guideline J.

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 Guidelines G and J. 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 brought forth convincing evidence to adequately resolve the security concerns associated with Guidelines G and J. I therefore find that granting the individual’s access authorization would not endanger the common defense and security, and would be consistent with the national interest. Accordingly, I find that the individual’s access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: January 3, 2018