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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)
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Case No.: PSH-17-0062

Issued: January 24, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXX XXXX XXX (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 not be restored.

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 incidents 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 May 2017 and memorialized her findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. The DOE psychologist further concluded that the individual’s condition impairs his judgement and reliability.

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 I (Psychological Conditions) 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 and that of two witnesses. 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 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 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

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Guideline G and his psychological condition under Guideline I. 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* Guideline G. To support its concerns under Guideline G, the LSO cites the DOE psychologist's diagnosis of Alcohol Use Disorder, the individual's alcohol use, and the individual's four alcohol-related incidents. *See* Ex. 1.

Guideline I concerns psychological conditions and provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Guideline I at ¶ 27. As support for invoking Guideline I, the Notification Letter cites the report of the DOE psychologist which concluded that the individual suffers from interpersonal dysfunctions, avoidance of personal responsibility for patterns of problems, and lack of candor. Ex. 1.

IV. Findings of Fact

The individual has acknowledged a long history of alcohol abuse. He has been involved in four alcohol-related incidents, as cited by the LSO. Ex. 1 and 3. In 1994, the individual was cited for Minor in Possession by a local police department, and in October 1997, he was arrested and charged with Contributing to the Delinquency of a Minor. *Id.* Later, in April 2004, the individual was arrested and charged with Aggravated Driving While Intoxicated. His Breath Alcohol Content test results registered at .18. *Id.* The individual admitted that prior to the arrest, he consumed four or five mixed drinks containing scotch, over a three-and-a-half to four hour time frame. Also, in March 2005, he was cited for Open Container. *Id.* In his March 2017 PSI, the individual admitted that from 2011 to the present, he drank to intoxication two to three times a month after consuming two 12-ounce beers in less than two hours. *Id.*

Based on this information, the individual was referred to the DOE psychologist for a psychological evaluation. On May 1, 2017, the DOE psychologist evaluated the individual. In her Report, she concluded that, under the *Diagnostic and Statistical Manual Fourth Edition Text Revision (DSM-IV-TR)*, the individual meets the criteria for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 6. The DOE psychologist also concluded that the individual's "interpersonal dysfunctions, avoidance of personal responsibility for patterns of problems, and lack of candor are a constellation of personality patterns or conditions which can impair judgment, reliability and trustworthiness." *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 not be restored. Based on the facts in this record, 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.

The individual does not dispute the DOE psychologist's diagnosis that he suffers from 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. Transcript of Hearing (Tr.) at 18. He testified that he stopped drinking because he feared that he would lose his clearance. *Id.* He further testified that after receiving his blood test results from the DOE psychologist, he realized he had to stop drinking. *Id.* He reiterated that he was fearful of being honest with the DOE psychologist and losing his clearance. The individual testified that he was hesitant to attend Alcoholic Anonymous (AA) meetings because of his past history of having an anxiety disorder. *Id.* He stated that he thought that "hearing other people's bad situations" would not be helpful for him. *Id.* According to the individual, after consulting with his doctor about ways to lessen his alcohol consumption, he determined the best way to prove that he was not drinking alcohol was to submit himself for blood tests. *Id.* He testified that he has taken two blood alcohol tests, both of which have been negative. The individual testified that he has not consumed alcohol for four months, and believes that he has gained clarity and a better feeling of health since abstaining from alcohol. *Id.* at 20, 22. He stated that he is now focused on his health and taking care of his children as a single father. *Id.* at 21.³

After listening to the testimony at the hearing, the DOE psychologist testified that she was concerned that the individual did not follow her strong recommendations to completely abstain from alcohol and to avail himself of formal treatment. *Id.* at 34. She testified that she suggested that the individual participate in AA. *Id.* at 35. Recognizing that AA is not for everyone, she testified that she also suggested alternative 12-step alcohol programs for the individual, none of which the individual entered. *Id.* The DOE psychologist testified that she recommended that the individual abstain from alcohol for a period of one year with formal treatment, or a period of two

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.

³ During the hearing, the individual offered the testimony of two co-workers. Both co-workers testified that the individual is a trustworthy person. *Id.* at 11, 14.

years without formal rehabilitation. *Id.* She noted that although the individual is meeting with his doctor, this does not constitute formal alcohol treatment. *Id.* at 34.

The DOE psychologist testified that her professional opinion concerning the individual is unchanged, noting his lengthy history of alcohol use and the absence of a formal treatment program specifically addressing his alcohol use disorder. *Id.* at 31, 32. She further noted that the individual has not yet learned strategies or relapse prevention to sufficiently maintain his abstinence. *Id.* at 32. In light of these concerns, the DOE psychologist testified that the individual's prognosis is guarded to fair, and opined that he has not yet achieved adequate rehabilitation at this time. *Id.* She also opined that the individual's personality patterns regarding his candor have not yet been resolved. *Id.* at 32. The DOE psychologist noted that the individual was misleading on several occasions when questioned about his alcohol use. *Id.* at 33. She testified that the individual should work in a counseling setting to address these issues and to focus on his self-awareness. *Id.* at 39. Finally, the DOE psychologist testified that she believes the individual's personality pattern, particularly his lack of candor regarding his alcohol use, still impairs his judgment and reliability. *Id.* at 36. There is no evidence in the record that the individual has participated in counseling sessions, as recommended by the DOE psychologist, to address these personality patterns.

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).*⁴ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has not yet achieved adequate rehabilitation.

The Adjudicative Guidelines describe factors that could mitigate security concerns regarding alcohol consumption and psychological conditions. *See* Adjudicative Guideline G and I, ¶ 23 and ¶ 29, respectively. In this case, the individual has not adequately resolved the security concerns for the following reasons: (1) he has not established that his behavior occurred under such unusual circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness or good judgment; (2) although the individual has acknowledged his alcohol problem, he has not yet established a pattern of abstinence in accordance with the recommendations made by the DOE psychologist, having only achieved four months of abstinence as of the date of the hearing; (3) the individual is not currently participating in an alcohol treatment program, and he has not demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, and has not received a favorable prognosis by a duly qualified medical professional; and (4) the DOE psychologist has opined that, in light of the individual's relatively recent recovery efforts, the individual has only a fair chance of success of remaining completely abstinent at this time. *See* Guideline G, ¶23 (a)–(d); Guideline I, ¶29 (a)–(e).

For these reasons, I find that the individual has not sufficiently resolved the DOE's security concerns under Guidelines G and I.

⁴ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/oha>.

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 I. 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 convincing evidence to adequately resolve the security concerns associated with Guidelines G and I. I therefore cannot find that restoring 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 not 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.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: January 24, 2018