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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:	December 19, 2017)	Case No.: PSH-17-0091
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Issued: April 3, 2018

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines or Guidelines), I conclude 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. The individual was arrested for Driving Under the Influence (DUI) in February 2016. Ex. 7 at 1. Subsequently, the Local Security Office (LSO) called the individual in for a Personnel Security Interview (PSI) in May 2016. Ex. 2. In response to information gathered from the PSI, a DOE consulting psychiatrist (DOE psychiatrist) evaluated the individual. Ex. 5.

Because the PSI and the DOE psychiatrist’s evaluation both raised security concerns, the LSO informed the individual in a Notification Letter dated November 27, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his security clearance had been suspended. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns

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.

under “Guideline G: Alcohol Consumption” of the Adjudicative Guidelines (Guideline G). Ex. 7.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 8. 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 LSO introduced nine numbered exhibits (Exhibits 1-9) into the record. The individual submitted 14 lettered exhibits (Exhibits A-N) and presented the testimony of two witnesses, including himself. 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.²

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 (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 or 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.

III. The Notification Letter and the Security Concerns at Issue

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. 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

² 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 that site.

about an individual's reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon a September 2016 written evaluation by the DOE psychiatrist, in which he diagnosed the individual with Alcohol Dependence under the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (DSM-IV-TR) and with Alcohol Use Disorder, Severe, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). Ex. 5 at 11. The LSO cited as additional Guideline G derogatory information that: (1) the individual was charged with DUI in February 2016; (2) the judge ordered the individual to undergo alcohol testing and participation in an alcohol program as part of his sentence; (3) the individual typically consumed one or two drinks of beer or wine at home or in a social setting and that it takes three to five drinks for him to become intoxicated; and (4) stressors due to the individual's marital situation had changed his drinking behavior in 2016 prior to his separating from his wife. Ex. 7 at 1-2.

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

IV. Findings of Fact and Hearing Testimony

The individual does not dispute the facts alleged in the Notification Letter. Tr. at 68. As such, I adopt the factual allegations in the Notification Letter as my factual findings in this case. The individual presented his own testimony and the testimony of a psychologist from whom he is currently receiving counseling.

The individual testified that his February 2016 DUI was his first and only alcohol-related incident. Tr. at 15. He stated that, at that time, he was stressed because his marriage was dissolving due to his wife's alcoholism, anxiety, and depression. *Id.* at 10. In addition, the individual asserted that the marriage was strained because of his son's anxiety and depression. *Id.* at 11. He continued that he and his wife have now divorced. *Id.* at 10; Ex. N. The individual testified that he has been in counseling since March 2016 with his psychologist. Tr. at 12. He stated that he previously saw his psychologist 13 years ago regarding a marital relationship problem. *Id.* at 13. The individual stressed that he no longer has any alcohol in his house and that he voluntarily entered into counseling prior to the judge's order. *Id.* at 15. He claimed that he has been subject to random alcohol tests at work and has passed them all; although he did admit that after his DUI, he continued to consume alcohol at a much reduced level of approximately a beer every couple of months. *Id.* at 16, 41. The individual also testified that he had previously stopped consuming alcohol for five years because of depression. Tr. at 19. In addition to his counseling, the individual declared that he attended an outpatient treatment program (OTP), completing it in October 2016. *Id.* at 31. He admitted that both the OTP and his psychologist advocated abstinence and that he misrepresented that he was abstinent to the OTP. *Id.* at 33, 35, 40. Not mentioned during his testimony, but evident from the record, was the fact that the individual previously attended substance abuse counseling. Ex. J at 14-15.

The individual continued that he ceased consuming alcohol in November 2017. Tr. at 18. He stated that, at that time, he also started attending Alcoholics Anonymous (AA). *Id.* at 23, 39. The individual claimed that he has an AA sponsor and is working step one of the AA 12-step process. *Id.* at 40. He testified that his family, including his girlfriend, children, and parents, are aware that he has stopped consuming alcohol and is attending AA. *Id.* at 42.

The individual's psychologist testified that he began treating the individual in early March 2016. Tr. at 44. He stated that he diagnosed the individual with Alcohol Use Disorder, Mild. *Id.* at 72-73. The psychologist asserted that he suggested the OTP to the individual and that he recommended abstinence. *Id.* at 47. He continued that he has had 25 sessions with the individual. *Id.* at 50. The psychologist confirmed that the individual is attending AA and opined that he is attending more than one time a week. *Id.* at 47, 74. He concluded that the individual's risk of relapse is low, if he continues with AA and remains abstinent. *Id.* at 73.

The DOE psychiatrist testified that he diagnosed the individual as suffering from Alcohol Use Disorder, Severe, because he believed that the individual met six of the criteria listed in the DSM-5. Tr. at 84-85; Ex. 5 at 11. He also testified that he diagnosed the individual with Alcohol Dependence under the DSM-IV-TR. Tr. at 78-79; Ex. 5 at 11. The DOE psychiatrist continued that he recommended twelve months of sobriety and opined that, with the individual's current four months of abstinence, he could be considered to be in early, partial remission. *Id.* at 87, 95. He concluded that the individual's risk of relapse is significantly high until he has completed twelve months of sobriety. *Id.* at 96, 121.

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.

As an initial matter, I note that legitimate security concerns exist as a result of the individual's alcohol use. Alcohol-related incidents, such as driving while under the influence can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline G at ¶ 22(a). Furthermore, a diagnosis by a duly qualified medical or mental health professional of alcohol use disorder can raise a security concern and serve as a disqualifier. *See id.* at ¶ 22(d). Here, the individual had a DUI and the DOE psychiatrist opined that he suffers from Alcohol Use Disorder, Severe. Accordingly, security concerns exist pursuant to Guideline G.

The Guidelines provide that the following conditions (in relevant part) may mitigate security concerns: (1) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and (2) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program. Guideline G at ¶ 23(b) and (c).

Although the individual is attending counseling and AA and has ceased alcohol consumption, his AA attendance and abstinence is in the early stages, beginning only four months prior to the hearing. While the individual has made progress in his rehabilitation efforts to date, I do not

believe he has demonstrated a clear and established pattern of abstinence with only four months of sobriety, as of the time of the hearing. *Contra* Guideline G at ¶ 23(b). Further, while the individual did attend the OTP, the record reflects that his discharge from that program was based partially on his declared abstinence, which he admitted to the DOE psychiatrist and at the hearing was untrue. In addition, the individual has a previous history of treatment. *Contra* Guideline G at ¶ 23(c). Finally, I concur with the DOE psychologist who opined that the individual would not be considered a low risk for relapse until he achieved at least twelve months of sobriety. Given the evidence above, I cannot find that the Guideline G mitigating factors described in ¶ 23 (b) or (c) are applicable in this case.

For these reasons, I find that the individual has not resolved the security concerns raised under Guideline G.

VI. 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 of the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve the security concerns under Guideline G. Accordingly, I have determined that the individual's access authorization should not be restored. Either party 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