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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: January 3, 2018)	Case No.: PSH-18-0002
)	
_____)	

Issued: March 27, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXX XXXX XXXXX (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), I conclude that the individual’s access authorization should not be granted.

I. Background

The individual is employed by a DOE contractor in a position that requires her to hold a security clearance. As a result of a background investigation, the local security office (LSO) called the individual to a Personnel Security Interview (PSI) in March 2017. Ex. 8. In response to information gathered from the PSI, a DOE consulting psychologist evaluated the individual. Ex. 6. As the psychologist’s evaluation raised unresolved security concerns, the LSO informed the individual, in a Notification Letter dated November 21, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under “Guideline G: Alcohol Consumption,” Ex. 1.

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.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. 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 and presented the testimony of the DOE psychologist. The individual introduced six lettered exhibits (Exhibits A-F) into the record and presented the testimony of three witnesses, including herself. 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 of 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 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 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

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 about an individual’s reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon the July 2017 written evaluation by the DOE psychologist, which concluded that the individual met the *Diagnostic and Statistical Manual, Fifth Edition* (DSM-V)

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.

criteria for a diagnosis of Alcohol Use Disorder and/or does habitually or binge consume alcohol to the point of impaired judgment. Ex. 1. The LSO additionally relied upon the individual's admissions, during the March PSI, that: (1) from December 2015 until March 28, 2016, she consumed a fifth of alcohol, Jack Daniels, every two days (2) in November 2015, she consumed a fifth of alcohol, Jack Daniels, once a week; and (3) from approximately 2008 to November 2015, she became intoxicated every one to two months after drinking nine to fourteen drinks. *Id.*

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

IV. Findings of Fact

The individual did not dispute the facts alleged in the Notification Letter. Ex. 2. The individual does, however, assert that she has completed an Intensive Outpatient Treatment program (IOP), and that she has been engaging in the Employee Assistance Program (EAP) at her worksite, participating in Alcoholics Anonymous (AA), and practicing abstinence from alcohol. *Id.* I have carefully considered the totality of the record in reaching the findings of fact set forth below.

The LSO interviewed the individual in a March 2017 PSI. During the PSI, the individual explained her alcohol use. Ex. 4. She indicated that she first began consuming alcohol at the age of 14 or 15, as a freshman in high school. *Id.* The individual explained that she often found herself in social settings where she was offered alcohol and recalled that she only consumed a couple of drinks at a time during that time period. *Id.* Sometime between her sophomore and junior year in high school, the individual started consuming alcohol more regularly. *Id.* She indicated that she began to drink on the weekends with friends at social gatherings. *Id.* According to the individual, she would consume anywhere from nine to fourteen drinks, which were usually shots, once a month or once every two months. *Id.* She admitted to drinking to intoxication on every occasion. *Id.* The individual's alcohol consumption increased around November 2015 when she began consuming a fifth of alcohol (Jack Daniels) once a week. *Id.* In late November, the individual's alcohol consumption increased again to a fifth of alcohol every two days, and she continued this consumption through March 28, 2016. *Id.* She indicated that she was at a low point in her life at that time due to issues at work and in her personal relationship. These issues also caused problems with her family and friends. *Id.*

The individual stated that she abstained from alcohol from March 2016 through September 2016 after realizing that she needed to make changes in her life. *Id.* In April 2016, the individual sought outpatient counseling to address her alcohol issues, and to learn how to cope with her life issues. *Id.* According to the individual, although she was not given a diagnosis, her counselor at the time recommended that she abstain from alcohol until she felt comfortable in her life. *Id.* The individual stated that her counselor agreed that she could eventually consume alcohol again as

long as she learned how to cope with different stressors. *Id.* Consequently, she began consuming alcohol again in September 2016, starting slowly and only consuming about one or two beers at a time. *Id.* The individual ended her counseling sessions in October 2016 after her counselor told her that she did not need to be seen anymore. *Id.* The individual admitted that her alcohol consumption gradually began to escalate again. *Id.*

In July 2017, the individual underwent an evaluation performed by the DOE psychologist. Ex. 6. The DOE psychologist concluded that the individual has an alcohol use disorder and/or habitually or binge consumes alcohol to the point of impaired judgment. *Id.* at 7. She also concluded that the individual's laboratory results indicate that she is engaging in moderate to heavy alcohol consumption, either by bingeing or regularly consuming alcohol over long periods. *Id.* The DOE psychologist further concluded that the individual's continued consumption of alcohol can cause impaired judgement, and that there is no evidence of rehabilitation or reformation. *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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should not be granted. 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.

At the hearing, the individual testified that the last time she consumed alcohol was on November 23, 2017, stating that she remembers this date because it was Thanksgiving. Tr. at 64. She recalled that she had one or two beers that night and acknowledged that she had received paperwork regarding her clearance, including the DOE psychologist's report, on this date, so she knew "it was time for [her] to get sober." *Id.* The individual testified that she called to enter a treatment program two days after receiving the DOE psychologist's report. *Id.* at 66. However, she was unable to get an appointment until the following week. *Id.* at 67. She testified that she entered an IOP on December 4, 2017 and attended three days a week. *Id.* In addition, she met with her therapist once a week for a one-hour individual session. *Id.* The individual stated that she learned a great deal during her sessions, including coping mechanisms, mindfulness techniques and how to handle triggers. *Id.* at 68 and 70. She testified that she completed the 10-week IOP, adhering to the zero alcohol and drug compliance requirement, as well as random urinalysis testing. *Id.* at 69.

The individual further testified that she has been actively attending AA since December 4, 2017. *Id.* at 73. She stated that she attended two to three AA meetings for ten weeks, while in the IOP, and currently attends meetings once a week. *Id.* She further stated that she is working on Step 3 of the 12-Step program, and has learned that alcohol can never be a part of her life again. *Id.* at 74. The individual also testified that she now participates in an aftercare treatment program, meets with a therapist in her employer's EAP program and has a good support system which includes her AA sponsor and group members, her therapist and her family and friends. *Id.* at 71, 72. The

individual readily acknowledged that she has participated in counseling in the past, but believes her current treatment and counseling has focused more on her alcoholism rather than outside issues in her life at the time. *Id.* at 76. She explained that she now feels like she is in a “real” recovery process because of the work she has put into staying sober. *Id.* at 77. When asked why she resumed alcohol after ending her previous counseling sessions, the individual testified that she was in denial about being an alcoholic, and believes that her relapse helped her to realize that she has an issue with alcohol. *Id.* at 78, 79. The individual testified that she does not have cravings for alcohol and knows how to remove herself from social situations where alcohol is available. *Id.* at 81. Finally, the individual testified that her future intention is to continue to abstain from alcohol. *Id.* at 84.

When the individual’s father testified on her behalf, he stated that, in the past, he knew that the individual struggled with alcohol, and was often in an angry, agitated state when she was younger. *Id.* at 40. He believes that the individual is now a different person who “has come to grips” with her alcohol problem and understands that alcohol can no longer be part of her life. *Id.* at 42. The individual’s father further testified that he believes that the individual will remain sober and has a good support system in place to help her with her sobriety. *Id.* at 46, 47. He testified that the individual is a trustworthy and reliable person. *Id.* at 61. Additionally, the individual’s friend (who has known the individual for about five years) testified that the individual’s alcohol consumption has changed in the past four months. *Id.* at 23. She stated that the individual does not consume alcohol anymore and has a “clearer head.” *Id.* The individual’s friend believes that the individual has a good support system of family and friends, and that her intention is to remain sober in the future. *Id.* at 29, 31.

After listening to the hearing testimony, the DOE psychologist acknowledged the positive nature of the individual’s 102-day sobriety, but stated that it is “still early in what we know is a long-term process.” *Id.* at 98. However, she stated that she was very impressed with the individual’s participation in treatment and her commitment to the recovery process. *Id.* She noted that she often listens to the way “people tell their stories, especially about problems or difficulties, and certainly substance abuse is one of them, the way it’s presented makes a difference.” *Id.* at 99. The DOE psychologist testified that she found the individual’s statements and answers to questions about her alcohol recovery to be “riveting,” and stated that it speaks to the individual’s honesty and sincerity. *Id.* She also stated that she was impressed with the individual’s “internalization of the motivations for sobriety,” which she noted some people do not have this early in the process. *Id.*

The DOE psychologist further testified that her only remaining question is time, noting that she had stated in her report that the individual should achieve one year of therapy and abstinence for rehabilitation. *Id.* She explained that the reason she suggested one year of rehabilitation was that, for a period of four or five months, the individual was drinking excessively on a daily basis, and exhibited tolerance and withdrawal. *Id.* at 101. However, she testified that although the individual would be considered in early remission because it has been less than 12 months, she believes the individual’s risk for relapse would be lower than what she would generally opine at this juncture in the individual’s sobriety. *Id.* at 103. She further opined that, in light of the individual’s progress, the individual has an excellent prognosis. *Id.* The DOE psychologist reiterated that the individual has internalized her motives for sobriety and understands the seriousness and danger that alcohol

poses. *Id.* When asked whether she still recommended one year of sobriety for the individual, the DOE psychologist stated that she would revise that recommendation. *Id.* at 106. She testified that, in light of the individual's progress, the individual's four months of sobriety would be adequate for her to be considered a moderate risk, but that six months of sobriety would be considered a low risk. *Id.* Finally, she testified that she no longer believes the individual has an impairment in her judgement and reliability. *Id.*

Guideline G

Habitual or binge consumption of alcohol to the point of impaired judgement, regardless of whether the individual is diagnosed with alcohol use disorder, can raise a security concern and may disqualify an individual from holding a security clearance. *See* Guideline G at ¶ 22(c). Furthermore, a diagnosis by a duly qualified mental health professional of alcohol use disorder can serve as a disqualifying condition. *Id.* at ¶ 22(d). Furthermore, there are a number of conditions that could mitigate the security concerns under this Guideline, including (in relevant part): 1) the individual acknowledged 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 has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. *Id.* at 23 (b) and (d).

Here, the individual has readily acknowledged her alcohol problem, has successfully completed a 10-week IOP, and had attended AA meetings for approximately four months, at the time of the hearing. The individual also testified that she attends aftercare meetings and meets with a therapist through her employer's EAP program. Although the DOE psychologist opined that the individual's prognosis is excellent and that she was impressed with the individual's commitment to the recovery process, the individual is still very early in the recovery process, achieving just four months of sobriety as of the date of the hearing. As noted by the DOE psychologist, after revising her recommendation for the individual, she still believes the individual would not be considered a low risk for relapse until she achieved at least six months of sobriety. While the individual has made great progress in her rehabilitation efforts to date, I do not believe she has demonstrated a clear and established pattern of abstinence with only four months of sobriety, as of the time of the hearing.

For these reasons, I conclude that the security concerns under Guideline G have not yet been sufficiently resolved.

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 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 associated with Guideline G. Accordingly, I have determined that the individual's access

authorization should not 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
Office of Hearings and Appeals

Date: March 27, 2018