

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: January 16, 2018)
_____)

Case No.: PSH-18-0007

Issued: May 3, 2018

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be denied.

I. BACKGROUND

On December 19, 2012, the Individual’s employer performed a random alcohol screening on him, which indicated that the Individual’s blood alcohol concentration (BAC) was .012. Ex. 7 at 1; Ex. 8 at 3. A psychologist employed by the Individual’s employer (the Staff Psychologist), noting that the screening tests were conducted three hours and 45 minutes after the Individual’s shift began, calculated that the Individual’s BAC would have been .063 at the start of his shift. Ex. 1; Ex. 6. The Individual was subsequently terminated by his employer, however, the Individual successfully contested this termination in an arbitration proceeding. In 2014, he returned to work at the DOE contractor. In early 2017, the Individual applied for access authorization. Because of the security concerns raised by the Individual’s alcohol-related termination, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on June 21, 2017, and had the Individual evaluated by a DOE psychologist (the DOE Psychologist) on August 14, 2017. The DOE Psychologist found that the Individual has an Unspecified Alcohol-Related Disorder. Ex. 8

¹ Under the regulations, “access authorization” means 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 also be referred to in this Decision as a security clearance.

****This document contains information which is subject to withholding from disclosure under 5 U.S.C. § 552.****

at 1, 10. Accordingly, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on January 16, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his union president (who was once the Individual's colleague), and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0007 (hereinafter cited as "Tr."). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11 (hereinafter cited as "Ex."). The Individual submitted 4 exhibits, marked as Exhibits A through D.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G 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). The LSO alleges that the Individual has been diagnosed by the DOE Psychologist with an Unspecified Alcohol Disorder; had been consuming four to six beers in a three to four hour period 15 times a month, and had reported to work with a BAC of .063 percent on December 19, 2012. This information adequately justifies the LSO's invocation of Guideline G and raises significant security concerns. The Adjudicative Guidelines state: "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. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . . regardless of whether the individual has been diagnosed with alcohol use disorder." Guideline G at ¶ 22(b). Guideline G further provides that a "diagnosis by a duly qualified medical or mental health professional . . . of [an] alcohol use disorder" "could raise a security concern and may be disqualifying." Guideline G at ¶ 22(d).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires 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 or restoring 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

An Incident Report prepared by the Staff Psychologist indicates that, on December 19, 2012, the Individual underwent a breath alcohol test which indicated that the Individual’s BAC was .012 percent. Ex. 7 at 1. However, the Staff Psychologist estimated that, because the test was administered three hours and 45 minutes after the Individual’s shift began, the Individual’s BAC at the time he started his shift was .063 percent. Ex. 7 at 1. The Staff Psychologist believed that the Individual was likely to have consumed 14 or more beers the evening before he tested positive at work. Ex. 7 at 1. The Staff Psychologist further reported that the Individual informed him that he typically consumed six to eight beers, sometimes consuming as much as ten beers at a time. Ex. 7 at 1. The Staff Psychologist further opined that the Individual met the Center for Disease Control’s criteria for binge drinking, and that the Individual “very likely has a diagnosable Alcohol Use Disorder.” Ex. 7 at 1. The Staff Psychologist referred the Individual for evaluation by a local treatment facility and to an Employee Concerns Program (EAP) substance abuse specialist, and informed the LSO of his concerns. Ex. 7 at 1.

The DOE contractor subsequently terminated the Individual’s employment on February 5, 2013. Ex. 10 at 31. However, the Individual successfully challenged this termination in an arbitration proceeding and was reinstated in September 2014. Ex. 10 at 30–31.

In early 2017, the Individual applied for a security clearance. Ex. 5. Because of his prior alcohol-related incident at work, the LSO conducted a PSI of the Individual on June 21, 2017, during which the Individual admitted that he was still consuming alcohol in the same manner that resulted in the 2012 work incident. Ex. 10 at 37. The Individual stated that he had not realized that he was continuing those alcohol habits until he said it out loud at the PSI. Ex. 10 at 37.

The LSO requested that the Individual be evaluated by the DOE Psychologist, who examined the Individual and issued a report on August 22, 2017. Ex. 8 at 2-3. In the report, the DOE Psychologist diagnosed the Individual with an “Unspecified Alcohol Use Disorder,” meaning that clinical concerns existed, but they did not rise to the level where the DOE Psychologist could definitively diagnose the Individual with an Alcohol Use Disorder under the DSM 5. Tr. at 57; Ex. 8 at 10. The DOE Psychologist opined that the Individual should abstain from using alcohol for at least six months and that he should share the DOE Psychologist’s report with his personal physician and adhere to any medical advice provided by his physician. Ex. 8 at 10.

The Individual acknowledges that he has an alcohol problem. Tr. at 19, 36. However, he has abstained from alcohol use since January 3, 2018. Tr. at 23. The Individual was motivated to stop drinking because of his diabetes and other health conditions. Tr. at 41, 53-54. The Individual testified that he intends to permanently abstain from alcohol use, and understands that he cannot use alcohol safely. Tr. at 31, 37-38, 50-51. In January 2018, he enrolled in a two month intensive outpatient program (IOP). Tr. at 24–26. However, three weeks before the Individual was to finish the IOP, his wife was admitted to the hospital and diagnosed with lung cancer. Tr. at 24–25. The Individual left the IOP at that time to attend to his wife’s health issues. Tr. at 24-25. As an alternative to the IOP, the Individual requested that his doctor prescribe him Antabuse, a medication that causes its users to become violently ill if they consume alcohol. Tr. at 28–30.

The Individual also began attending Alcoholics Anonymous (AA) meetings in January 2018.² Tr. at 26. The Individual testified that the support of fellow AA members has helped him cope with his wife’s illness and helped him to refrain from further alcohol use. Tr. at 26, 49. The Individual testified that he was continuing to attend AA meetings, had obtained an AA sponsor, has started working the AA’s Twelve-Step Program, and was no longer taking Antabuse. Tr. at 27–28, 35-37. The Individual testified that he talks to his sponsor daily. Tr. at 49. The Individual testified that he likes attending AA meetings and plans to keep attending AA “for a long time.” Tr. at 36. The Individual has also met with an EAP counselor on four occasions. Tr. at 28. The Individual testified that he sees his primary care physician about once per month and that the doctor has prescribed him several medications to help with his anxiety, sleep, and back pain. Tr. at 31–31, 43–46.

At the hearing, the DOE Psychologist observed the testimony of both of the other witnesses before he testified. The DOE Psychologist testified that he diagnosed the Individual with “an unspecified alcohol disorder” because, while he found “some clinical concerns,” they did not rise to the level where he could definitively diagnose the Individual with Alcohol Use Disorder. Tr. at 57. The DOE Psychologist testified that his concerns were based upon the Individual’s ongoing history of significant alcohol consumption, work-related alcohol issues, and health concerns related to his alcohol use. Tr. at 57. The DOE Psychologist noted that the Individual has only been abstaining from alcohol use for three months. Tr. at 62. However, the DOE Psychologist further opined that the Individual “is showing an admirable commitment to abstinence, and he has a reasonable recovery plan, his involvement with AA speaks well.” Tr. At 62. He also noted that the Individual is motivated by his concerns about his wife’s health, his own health, and his children’s future. Tr. at 62. The DOE Psychologist found that these factors “speak very positively” about the Individual’s recovery progress, and stated that he was “impressed with the progress he’s making.” Tr. at 62. He further opined that these factors, and the fact that the Individual has the appropriate coping resources in place, substantially mitigate the risk that the Individual might relapse. Tr. at 63-64. The DOE Psychologist stated that the Individual had met the minimum requirements to be considered in recovery. Tr. at 64–65. Though the Individual had not been abstinent for the recommended six months, he had remained abstinent through a stressful situation and had built a support system to help him remain abstinent in the future. Tr. at 66–70. The DOE Psychologist testified that he believed the Individual would likely remain abstinent. Tr. at 70. However, the DOE Psychologist acknowledged that the Individual’s period of abstinence was “short” and that

² The Individual has submitted records documenting his attendance at 18 AA meetings between January 6, 2018, and March 22, 2018. Ex. C.

the Individual “hasn’t had a long time in recovery.” Tr. at 62, 64. He further testified that “Statistically speaking, the more time in recovery, the more solid the recovery.” Tr. at 62.

V. ANALYSIS

The question before me under Guideline G is whether the Individual’s recovery has progressed far enough to sufficiently mitigate the security risks raised by his Unspecified Alcohol Disorder. Guideline G provides that security concerns arising from alcohol consumption can be mitigated when “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.” Guideline G at ¶ 23(b). In the present case, the record shows that the Individual has acknowledged his alcohol problem, attended the IOP, became an active AA participant, and discontinued alcohol consumption. These actions, along with his three months of abstinence, are all factors that provide partial mitigation of the security issues raised by the Individual’s alcohol consumption. The relatively mild nature of the Individual’s diagnosis, and the fact that he has met most of the treatment recommendations of the DOE Psychologist (by attending the IOP and becoming actively involved in AA), provide some compensation for the fact that the Individual has only established a period of three months of sobriety (instead of the six-month period initially recommended by the DOE Psychologist). The Individual is obviously strongly motivated to maintain his recovery by his and his wife’s health concerns, and as noted by the DOE Psychologist, the Individual’s ability to remain abstinent through the stresses imposed by his wife’s illness, as well as his own health concerns, are positive factors which increase the likelihood that the Individual will be able to maintain his sobriety going forward.

However, despite the individual’s clear commitment and progress, I find that the security concerns have not been fully resolved. The individual has a longstanding alcohol problem, dating back to at least 2012. The record reflects that the Individual was terminated in February 2013, based on the results of a random alcohol screening. The Individual was eventually reinstated; however, despite nearly losing his livelihood, his drinking continued unabated. In June of 2017, the Individual applied for a security clearance, and acknowledged during the PSI that he was still consuming alcohol in the same manner that resulted in his 2012 termination, perhaps as often as 15 times a month. The individual testified that he had not realized that he was continuing those habits until he stated it out loud at the PSI, yet he continued to drink, at some level, until on or around January 3, 2018.

Finally, the record shows that, at the time of the hearing, the Individual had only completed approximately three months of abstinence from alcohol. I find that a three-month period is insufficient to demonstrate a clear and established pattern of abstinence, in light of the other factors cited herein.

Accordingly, I find that the Individual has not resolved the security concerns raised under Guideline G by his Unspecified Alcohol Disorder diagnosis.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the security concerns raised under Guideline G. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals