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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 19, 2018)	Case No.: PSH-18-0008
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Issued: April 25, 2018

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 “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 have determined that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE Contractor and has held a security clearance for several years. In June 2016, the individual timely self-reported that he had been arrested for driving while intoxicated (DWI). In July 2016, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual. Because DWI is an alcohol-related crime, the LSO referred the individual for an evaluation by a DOE-consultant psychologist who determined that the individual met the *Diagnostic and Statistical Manual of the American Psychiatric Association, 4th Edition TR (DSM-IV-TR)*, criteria for Alcohol Abuse, and the *Diagnostic and Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)*, criteria for Alcohol Use Disorder, Mild.

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 December 2017, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to continue holding a security clearance. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines G (Alcohol Consumption) and J (Criminal Conduct) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and on January 19, 2018, I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of four witnesses—his alcohol counselor, his girlfriend, his supervisor, and a close friend—and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the individual. In addition to the testimonial evidence, the LSO tendered 11 numbered exhibits into the record (Exhibits 1-11). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript will be cited as “Tr.” followed by the relevant page number.

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 standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 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). An individual is thus afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the 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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two bases for administrative review of the individual's request for access authorization, Guidelines G and J. With respect to Guideline G, it is well established that that 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. Adjudicative Guidelines, Guideline G at ¶ 21. As its basis for invoking Guideline G, the Notification Letter cited to: the DOE psychologist's conclusions that the individual meets the DSM-IV-TR's criteria for Alcohol Abuse; uncontested evidence of three alcohol-related incidents away from work in 1990, 2007, and 2016; the individual's own statements about his impaired ability to make a good decision due to alcohol consumption; and the individual's interrogatory responses indicating that, as of June 30, 2017, he continued to consume alcohol and had not sought treatment for his alcohol use. Ex. 2 at 1.

The security concern expressed in Guideline J relates to criminal activity, which, by its very nature, creates doubt about a person's judgment, reliability, and trustworthiness and calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines, Guideline J at ¶ 30. As evidence of its concern under this Guideline, the LSO enumerated three incidents of criminal activity dating from 1990 to 2016. Ex. 2 at 2.

These allegations adequately support the invocation of Guidelines G and J, and they raise serious security concerns.

IV. Findings of Fact

On May 27, 2016, the individual was at his home with his girlfriend. Tr. at 110; Ex. 7 at 3. Between 5:00 and 7:00 p.m., he consumed about three glasses of wine. Tr. at 108–10; Ex. 7 at 5. Around 7:00 p.m., a friend called, inviting the individual and his girlfriend out for dinner. Tr. at 110; Ex. 7 at 5. He accepted and drove to the restaurant, about 15 to 20 minutes away. Ex. 7 at 5–6. There, the individual consumed two beers with food. Tr. at 112. He and his girlfriend left to return home at about 11:00 p.m. *Id.* Before leaving, they discussed whether it was safe for either of them to drive. Tr. at 115–16. They decided that the individual should drive. *Id.*

On the way home, the individual was stopped at a checkpoint. Ex. 7 at 20. An officer administered several field sobriety tests, which the individual failed. Tr. at 65. The individual also failed a breathalyzer test. *Id.* He was then arrested and charged with misdemeanor Driving While Intoxicated (DWI). Ex. 7 at 20. The individual received another breathalyzer test at the police station at about 12:40 a.m. Ex. 9. His Blood-Alcohol Concentration (BAC) was recorded at 0.22.²

² The arrest report states that the individual claimed that he had not been drinking. Ex. 9.

Id. Despite his high BAC, the individual was only moderately impaired.³ Tr. at 59–60. The individual, represented by counsel in the matter, pleaded guilty to misdemeanor DWI and timely completed all the requirements of his sentence. Tr. at 105.

In June 2016, the individual reported his arrest to his employer. Ex. 8. In July 2016, the LSO conducted a PSI with the individual. Ex. 7. During that interview, the individual reported two prior alcohol-related interactions with law enforcement. The first was in 1990 when the individual was 25 years old. Ex. 7 at 10–11. The individual was pulled over for speeding. When the officer asked if he had been drinking, the individual admitted that he had. Because he was only a short distance from his destination, the officer allowed the individual to continue on with just a warning to stay off the road for the rest of the night. *Id.* The second incident was in 2007. The individual had been at a wedding reception and was intoxicated. Ex. 7 at 17–19. He approached a mounted police officer and interfered with the police horse, causing a disturbance. *Id.* Officers wrestled the individual to the ground, arrested him, and charged him with disorderly conduct. *Id.* These charges were later dropped due to lack of evidence and the individual’s lack of a prior criminal record. Ex. 7 at 23.

During the PSI, the individual disclosed his then-current drinking habits and his efforts to complete the requirements of his legal obligations from the DWI sentencing. Around the time of his arrest, the individual would have two to four drinks on a weekend day, either Friday or Saturday, but never Sunday. Ex. 7 at 20; *see also* Ex. 6 at 4–5. He would not drink during the week, except when watching sports. In those circumstances, the individual would have one to two drinks. Ex. 7 at 20; *see also* Ex. 6 at 5. After his arrest, the individual underwent a clinical evaluation for alcohol abuse because his attorney advised that having the evaluation completed by his hearing might hasten the proceedings. The evaluation indicated that the individual did not suffer from alcohol abuse and that the DWI was an isolated incident. Ex. 6 at App. B; Tr. at 102–03. During the evaluation, the clinician did not question the individual’s high BAC and did not know about his previous alcohol-related incidents. Tr. at 120–121, 146.

At the end of the PSI, the LSO informed the individual that he would need to undergo a psychological evaluation with a DOE psychologist to determine whether he had a “problem with alcohol.” Ex. 7 at 28. The individual declined a copy of the psychologist’s report, believing that he would receive the results of his evaluation regardless of whether he received the report. *Id.* at 26. The DOE psychologist issued his evaluative report in November 2017. Ex. 6. The individual did not receive a copy of the report until February 7, 2018. Tr. at 106.

At his evaluation, the individual reported to the DOE psychologist that after his arrest he rarely drank alcohol but that he may have had one or two beers at a party or while camping. Ex. 6 at 5. However, at the individual’s hearing, his alcohol counselor and his girlfriend testified that until February 2018, the individual’s typical drinking habits were to consume two to five drinks on a

³ The individual questioned the accuracy of his recorded BAC results at his hearing. He asked a witness, his girlfriend, to testify about whether she thought the test result matched his behavior. Tr. at 60–62. She testified that she did not and that she was concerned with the test’s accuracy and the possibility that the individual may have health conditions that could cause an elevated BAC without the accompanying intoxication. *Id.* After this testimony, the individual indicated that the test may have been inaccurate, but acknowledged that he had driven while intoxicated, regardless of any potential test inaccuracy. Tr. at 68.

weekend day, either Friday or Saturday, and no alcohol during the week. Tr. at 16, 53–54. The individual did not contest any witness’s testimony regarding his drinking habits between his arrest and February 2018.

The DOE psychologist testified that he has likely driven while intoxicated on more occasions than the two identified during the PSI. Tr. at 140. After his arrest, the individual would arrange in advance to spend the night when drinking at another person’s home or while camping so that he could be certain that he would not drink and drive. *Id.* at 116.

Shortly after Christmas 2017, the individual received the Notification Letter dated December 21, 2017. *Id.* at 130. The Notification Letter included the DOE psychologist’s diagnosis of alcohol abuse. Ex. 3; Ex. 6. Surprised, the individual immediately sought help through his employer’s Employee Assistance Program (EAP). Tr. at 56, 105. He was matched with an alcohol and substance abuse counselor and attended his first appointment on January 30, 2017. *Id.* at 13, 105–06. The counselor helped the individual “explore his drinking,” which involved taking special notice of where, how much, and how often he was consuming alcohol. *Id.* at 15. She explained to him that his efforts to avoid another DWI by arranging in advance to sleep where he would be drinking demonstrated that he planned his social activities in a way that enabled him to drink to excess. *Id.* at 15–16. By his fourth session with the counselor, the individual had chosen to abstain from all alcohol. *Id.* at 106. His last drink was in February 2018. *Id.* at 122. The individual continued seeing the counselor at his own expense after using all the EAP sessions. *Id.* at 56. He began attending three AA meetings per week and got a sponsor in March 2018. *Id.* at 107, 132.

At the hearing, multiple witnesses testified that the individual was embarrassed and devastated by his actions. Tr. at 83, 93, 145. The DOE psychologist testified that he became visibly emotional and upset when discussing the potential for harm to others that his actions created. Ex. 6 at 5.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual 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 at this time. 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.

A. Guideline G

The LSO’s Guideline G security concerns revolve around the individual’s long-time use of alcohol that has led to frequent intoxication over the years. Certainly, when an individual is intoxicated, his good judgment is challenged, and his reliability and trustworthiness become questionable. Security concerns under Guideline G can be mitigated by a number of factors, such as participation in or successful completion of a treatment program, a “clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations,” or the concerning

behavior being so infrequent that it is unlikely to reoccur. Adjudicative Guidelines, Guideline G at ¶ 23(a)–(d).

The individual reported a significant change in his alcohol consumption habits to the DOE psychologist, but his witnesses' testimony at his hearing, his own testimony at his hearing, and his self-reporting to his alcohol counselor indicate that, prior to February 2018, he consumed a greater quantity of alcohol than he told the psychologist, and on a more frequent basis. The individual did not significantly decrease his drinking after his arrest. From the July 2016 PSI to the time just before he began abstinence, the only decrease in alcohol consumption he reported was eliminating an occasional weeknight drink while watching sports. *Compare* Ex. 7 at 20 *with* Tr. at 16, 53–54.

The individual's solution to prevent risky alcohol use did not address the LSO's Guideline G security concerns. His own expert witness testified that, by making advance arrangements to sleep where he would be consuming alcohol, the individual was making a plan to abuse alcohol. *Id.* at 16.

The individual had, by the hearing date, abstained from alcohol entirely for several weeks and was regularly attending AA meetings during that time. However, the individual did not seek treatment until over a year after the May 2016 arrest, doing so only after receiving the Notification Letter. The individual stated that he did not know he had an alcohol abuse problem until receiving the Notification Letter containing the DOE psychologist's diagnosis. Tr. at 106. In discussing the delay in receiving the report, the individual stated that he wished he'd "had the opportunity to have started [his] treatment earlier." *Id.* at 152. He referred to learning about his diagnosis as an "oh, my God" moment. *Id.* at 150. Although he might not have been ready or able to recognize them as such, his numerous alcohol-related encounters with law enforcement demonstrate that his alcohol use had been problematic long before he received the psychologist's report:

- The individual chose to drive while intoxicated in May 2016. He repeatedly characterized this choice as "a mistake" and "poor judgment." Tr. at 64, 117.
- He had prior alcohol-related interactions with law enforcement, one of which resulted in his arrest.
- This was the individual's second alcohol-related interaction with law enforcement involving drunk driving.
- The infraction, a DWI, was serious enough that the individual had to report it to his employer and undergo a Personnel Security Interview.
- The individual was alarmed by the high BAC result on his police report.

Despite these indicators that his alcohol consumption may have been problematic, the individual did not seek sustained medical or mental health treatment for his alcohol issues until seeing the DOE psychologist's diagnosis. He did not choose abstinence until two weeks after his first appointment with his alcohol abuse counselor, over six weeks after learning of the DOE psychologist's diagnosis.

The DOE psychologist expressed his opinion, with which I agree, that the individual is taking serious steps in the right direction to treat his alcohol abuse. While these steps are enough to mitigate the DOE psychologist's medical and mental health concerns, they are not enough to

resolve his Guideline G security concerns. The individual's efforts since receiving the DOE psychologist's report are encouraging and commendable. However, such a short period of treatment—seven weeks of counseling and five weeks of abstinence as of the date of the hearing—cannot overcome the individual's decades-long pattern of risky alcohol-related behavior. In short, the individual's efforts do not demonstrate the clear and established pattern of modified consumption or abstinence envisioned by the Guidelines. *See* Adjudicative Guidelines, Guideline G at ¶ 23(b). Uncertainty remains as to the individual's future alcohol use and I must resolve any doubt in favor of national security. Therefore, I find that the individual has not resolved the LSO's concerns under Guideline G at this time.

C. Guideline J

Criminal activity raises security concerns under Guideline J. An individual who is unable or unwilling to comply with laws, rules, and regulations presents a risk when handling classified information, which requires strict adherence to its own set of laws, rules, and regulations. Mitigating factors for Guideline J include the passage of so much time since the criminal activity that further criminal behavior is unlikely, and evidence of successful rehabilitation. Adjudicative Guidelines, Guideline J at ¶ 32(a), (d).

The individual's criminal history shows a series of three incidents, each more serious than the last, and each occurring under similar circumstances. The individual's criminal activity seems inextricably tied to his alcohol use. The 2016 arrest was not his first incident of driving while intoxicated, and the DOE psychologist testified that he has likely driven while intoxicated on other occasions. When his judgment is impaired by alcohol, the individual is less willing to adhere to the law, as demonstrated by his decisions to drive when intoxicated and to engage in unruly conduct.

Several witnesses testified regarding the individual's remorse for his irresponsible behavior in 2016 and to his general good character. Nevertheless, the individual has only recently foresworn the circumstances under which he engaged in criminal activity, and, while his rehabilitation is off to a strong start, it is simply too soon to declare it "successful." Until the individual has resolved the LSO's concerns regarding his alcohol consumption, I am not confident that he will not engage, intentionally or not, in alcohol-related criminal activity in the future. Accordingly, I find that the individual has not resolved the LSO's concerns under Guideline J at this time.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guidelines G and J of the Part 710 regulations. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring the individual's DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore an access authorization to the individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals