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

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| In the Matter of: Personnel Security Hearing |) | |
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| Filing Date: March 1, 2018 |) | Case No.: PSH-18-0018 |
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Issued: May 23, 2018

Administrative Judge Decision

Neil Schuldenfrei, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States 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.”¹ 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 restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. The Individual submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to the U.S. Office of Personnel Management on August 31, 2016. DOE Ex. 8 at 49. As part of its evaluation of the Individual for a security clearance, the local security office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on August 21, 2017. DOE Ex. 9. Based upon information provided by the Individual at the PSI, the analyst who interviewed the Individual recommended that the Individual undergo a psychological evaluation. DOE Ex. 4 at 1. A DOE psychologist conducted an evaluation of the Individual on October 23, 2017. DOE Ex. 6 at 1.

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

As the PSI and DOE psychologist's evaluation raised unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated January 9, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's 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 F, Financial Considerations" and "Guideline G, Alcohol Consumption." DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO introduced ten (10) numbered exhibits (DOE Ex. 1-10) into the record and presented the testimony of the DOE psychologist. The Individual introduced four (4) lettered exhibits (Individual Ex. A-D) into the record and presented the testimony of seven (7) witnesses, including himself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) as the bases for denying the Individual a security clearance. DOE Ex. 1.

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Guideline F at ¶ 18. The Notification Letter asserted that: the Individual admitted that he failed to file federal or state income tax returns for the 2015 and 2016 tax years; the Individual admitted that he failed to file state business tax returns for the 2015 and 2016 tax returns for a business that he operated; and, the Individual admitted during his psychological evaluation that he failed to file his 2016 tax returns by the date he stated he would do so in his PSI.² DOE Ex. 1 at 1-2. The Individual's admission as to his failure to file federal and state tax returns (including state business tax returns) justifies the LSO's invocation of Guideline F in the Notification Letter. Guideline F at ¶ 19(g).

With respect to Guideline G, 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. The Notification Letter asserted that: the DOE psychologist determined that the Individual had a history of binge drinking, diagnosed the Individual with Alcohol Abuse Disorder, Moderate, in Early Remission, and concluded that the Individual had not provided evidence of rehabilitation or reformation; the Individual admitted to drinking to intoxication as recently as August 19, 2017; the Individual was charged with Aggravated Driving Under the Influence in August 2008; a neighbor of the Individual

² Specifically, the Notification Letter indicated that, during his PSI, the Individual stated that he would file his 2016 tax returns (federal and state, including state business tax returns) by the extension deadline of October 16, 2017, but the Individual later admitted that they had not been filed by that date.

summoned law enforcement in response to the Individual's behavior while intoxicated in 2012; the Individual resumed drinking after several periods of prior alcohol-related treatment; and, the DOE psychologist could not conclude that the Individual was no longer a risk to return to binge drinking. DOE Ex. 1 at 2–3. The Individual's alcohol-related incidents away from work, binge drinking, and prior relapses after treatment, as well as the DOE psychologist's diagnosis of the Individual as suffering from Alcohol Abuse Disorder, justify the LSO's invocation of Guideline G in the Notification Letter. Guideline G at ¶ 22(a),(c),(d),(f).

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 the Individual's 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.

IV. FINDINGS OF FACT

The Individual acknowledged that alcohol consumption has negatively affected his life, and that he has struggled to restrain himself from consuming alcohol to the point of intoxication. DOE Ex. 9 at 104–13. The Individual was involved in two (2) alcohol-related events cited in the Notification Letter, one of which led the Individual to plead guilty to Aggravated Driving Under the Influence. DOE Ex. 8 at 37–38; *see also* DOE Ex. 9 at 57–60. The Individual sought counseling for his alcohol consumption problem numerous times, but none of these periods of counseling resolved the Individual's alcohol consumption problem. *See* DOE Ex. 8 at 40–41; *see also* DOE Ex. 6 at 6. The Individual consumed alcohol to intoxication as recently as August 19, 2017. DOE Ex. 9 at 74–75. The Individual consumed alcohol, but not to the point of self-reported intoxication, as recently as January 17, 2018. Transcript (Tr.) at 149.

The DOE psychologist conducted a psychological evaluation of the Individual on October 23, 2017. DOE Ex. 6 at 1. The DOE psychologist concluded that, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth (DSM-5)*, the Individual met the criteria for Alcohol Use

Disorder, Moderate, in Early Remission, without adequate evidence of rehabilitation or reformation. *Id.* at 7. The DOE psychologist also concluded that the Individual has a long history of binge drinking. *Id.* The DOE psychologist recommended that the Individual either: (a) abstain from alcohol for at least six (6) months, attend alcohol rehabilitation counseling or document his participation in Alcoholics Anonymous (AA) meetings, and undergo random alcohol testing; or, (b) abstain from alcohol for at least twelve (12) months and undergo random alcohol testing. *Id.*

During the hearing, the Individual testified that he believed that he would struggle with his alcohol problem on an ongoing basis. Tr. at 157–58. The Individual testified that he consumed several alcoholic drinks in the period following his PSI and meeting with the DOE psychologist, most recently on January 17, 2018. *Id.* at 149–51. The Individual met with a licensed professional clinical counselor through the employee assistance program offered by his employer (the EAP Counselor), and testified that he participates in online AA meetings. *Id.* at 144–46, 151–52; *see also* Individual Ex. B (listing online AA meetings the Individual claimed to have attended). The Individual testified during the hearing that he intends to abstain from alcohol for as long as he can, and that he believes that his sessions with the EAP Counselor, his participation in AA meetings, and the support of his family will allow him to avoid returning to alcohol use. Tr. at 173–74. The EAP Counselor testified that he believes that the Individual’s prognosis for abstaining from alcohol is positive, provided that the Individual adheres to his current regimen. *Id.* at 192.

The DOE psychologist testified at the hearing, after observing the testimony of the other witnesses. She stated that her diagnosis of the Individual was unchanged, and she observed that the Individual had not adequately demonstrated rehabilitation or reformation. *Id.* at 205. The DOE psychologist testified that she based her conclusions on the fact that the Individual had not demonstrated the minimum period of abstinence from alcohol that she previously recommended, had not undergone testing for alcohol that would verify his claimed abstinence, and had not established an independent means of verifying his participation in AA meetings, such as discussing with the EAP Counselor the subjects covered in AA meetings. *Id.* at 205–09. The DOE psychologist also noted that the Individual consumed alcohol after their October 23, 2017, meeting, despite admitting that he suffered from alcohol problems and knowing that he did so against the recommendations of the DOE psychologist and the EAP Counselor. *Id.* at 205.

The record further reflects that the Individual has a history of failing to timely file federal and state tax returns. The Individual failed to file three (3) consecutive years of federal and state tax returns as of the date that he completed his 2016 e-QIP. DOE Ex. 8 at 44–45. The Individual remained three (3) years behind in his obligation to file federal and state tax returns as of the date of his PSI. DOE Ex. 9 at 6. The Individual filed his federal income tax returns for the 2015 and 2016 tax years prior to the Hearing. Individual Ex. A at 18–22.

At the hearing, the Individual testified that he had filed his state personal income tax returns and business tax returns for the 2015 and 2016 tax years. Tr. at 99–100. Prior to the hearing, the Individual offered as Exhibit A unsigned copies of state personal income tax returns and a register of business taxes assessed against his business. Individual Ex. A at 1–17. During the hearing, the Individual requested leave to submit additional documents which he asserted would demonstrate that he had filed state personal income tax and business tax returns. Tr. at 93, 115. I granted the Individual leave to submit the additional documents as Exhibit D. *Id.* at 94, 117–18. On April 30,

2018, the Individual submitted Exhibit D via email, which exhibit included printouts from a state website concerning the filing of the Individual's personal income tax returns, a payment plan for outstanding business tax liability offered to the Individual by the state, and printouts of receipts for payments by the Individual against the business tax liability. Individual Ex. D.

V. ANALYSIS

A. Guideline F Considerations

There is no dispute as to the fact that the Individual has a long history of failing to timely file federal and state tax returns, and the Individual testified at the hearing that he agrees with the Notification Letter's statements, in that regard. Tr. at 169–70. An individual's failure to timely file tax returns is one of the factors that may raise security concerns under Guideline F. Guideline F at ¶ 19(g).

Failure to timely file tax returns raises security concerns under Guideline F because such failure may evidence "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations . . ." *Id.* at ¶ 18. I find that the Individual's habitual failure to timely file tax returns raises serious concerns as to his judgement and willingness to abide by rules and regulations. During the hearing, the Individual testified that he was aware of his legal obligation to file federal and state tax returns, but assumed that the consequences for failing to do so were limited to financial penalties and interest. Tr. at 95–96. Therefore, he decided that he would file his tax returns when he had more time and savings. *Id.* at 91–92. The Individual further testified that his attitude towards filing his taxes changed when he learned that failure to file tax returns was a criminal offense that could result in imprisonment. *Id.* at 96. The Individual's testimony concerning his motivation for filing his tax returns implies an unwillingness to abide by rules and regulations the Individual deems burdensome, unless the Individual perceives a serious risk to himself for failing to do so.

Although the Individual claimed during the hearing that financial factors contributed to his inability to timely file his tax returns, I do not credit these claims. The Adjudicative Guidelines provide for the mitigation of security concerns related to financial considerations when "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Guideline F at ¶ 20(b). The Individual asserted that the cost of the bookkeeper and CPA he selected to prepare his taxes exceeded his means, and that he deferred filing his taxes until he could pay the bookkeeper and CPA for their services. Tr. at 97. The testimony of the Individual's wife at the hearing as to their combined savings, and the wherewithal the Individual demonstrated by swiftly resolving a significant portion of his state tax liability in advance of the hearing, undermine his claim that he lacked the resources to pay for tax preparation services. *See id.* at 39; *see also* Individual Ex. D at 12. Moreover, I do not agree that the Individual's inability to pay a particular bookkeeper and CPA would have obviated his obligation to act responsibly under the circumstances to timely file his

tax returns, whether by seeking more economical assistance or by using software to self-prepare his tax returns.³

For the above reasons, I conclude that the Individual failed to resolve the security concerns set forth in the Notification Letter with respect to Guideline F.

B. Guideline G Considerations

The Individual acknowledged his problems with alcohol during the hearing, and did not dispute the findings set forth in the Notification Letter. Tr. at 129, 169–70. As described above, the Individual was involved in two (2) alcohol-related incidents away from work (including Aggravated Driving Under the Influence in 2008, and an incident with his neighbor in 2012) which demonstrate that the Individual’s judgment has been compromised by his alcohol consumption. Furthermore, significant evidence in the record establishes that the Individual has a history of binge drinking. *See* DOE Ex. 9 at 71–72; *see also* DOE Ex. 6 at 3–4. The Individual has sought treatment for his alcohol problem numerous times in the past, and has abstained from alcohol consumption for as much as one (1) year at a time, but has returned to binge drinking after each period of abstinence. *See* DOE Ex. 6 at 4–5. These factors led the DOE psychologist to diagnose the Individual with Alcohol Use Disorder, Moderate, in Early Remission, without adequate evidence of rehabilitation or reformation. *Id.* at 7. Each of these facts raises a security concern under the Adjudicative Guidelines. Guideline G at ¶ 22(a),(c),(d),(f).

Although the Individual offered testimony and evidence for the purpose of demonstrating that he had mitigated the security concerns associated with his alcohol consumption, I find that he has failed to do so. The Adjudicative Guidelines provide that an individual may mitigate alcohol consumption-related security concerns by acknowledging his or her problem, taking action to overcome the problem, and establishing a pattern of abstinence or responsible use. *Id.* at ¶ 23(b). The DOE psychologist testified at the hearing that her diagnosis of the Individual was unchanged, and that the Individual had not demonstrated action to overcome his alcohol problem adequate for her to conclude that he was rehabilitated or reformed. *See supra* p. 4. The Individual’s abstinence from alcohol for approximately three and one-half (3.5) months (which the Individual failed to verify with the alcohol testing recommended by the DOE psychologist) is inadequate to establish a substantial pattern of abstinence, particularly in light of his prior and repeated episodes of relapse, even after prolonged periods of abstinence. Accordingly, the Individual has not adequately established a pattern of abstinence or responsible use to mitigate the security concerns asserted by the LSO.

An individual may also mitigate security concerns related to alcohol consumption if he or she participates “in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress.” Guideline G at ¶ 23(c). Although the EAP Counselor

³ Although the Individual presented evidence that he ultimately filed each of the tax returns identified in the Notification Letter, I find that, given the circumstances of this case, the mere filing of the returns does not present sufficient mitigation pursuant to the Adjudicative Guidelines at ¶ 20.

testified that the Individual is participating in a counseling program, and is making satisfactory progress, the Individual's significant history of prior treatment and relapses prevents his current treatment from mitigating the security concerns asserted by the LSO.

Finally, an individual may mitigate security concerns related to alcohol consumption if he or she "has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of [AA] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." *Id.* at ¶ 23(d). The Individual's counseling with the EAP Counselor is ongoing, and therefore the Individual has not completed counseling. *See* Tr. at 157, 182. The DOE psychologist also testified that the Individual failed to demonstrate his rehabilitation, and recommended that the Individual continue his counseling with the EAP Counselor. *Id.* at 205–06.⁴

Furthermore, although the Individual claimed to have abstained from alcohol since mid-January, he did not submit to alcohol testing, as recommended by the DOE psychologist, which might have corroborated his claimed pattern of abstinence.

For the above reasons, I conclude that the Individual failed to resolve the security concerns set forth in the Notification Letter with respect to Guideline G.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines F and G of the Adjudicatory Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. 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 pursuant to 10 C.F.R. § 710.28.

Neil Schuldenfrei
Administrative Judge
Office of Hearings and Appeals

⁴ At the hearing, the Individual claimed to be participating in online AA meetings; however, his inability to demonstrate knowledge of the subject matter of these sessions during the hearing leads me to conclude that the Individual is either not actively participating in the meetings or is failing to realize the benefits he might attain from attending in-person meetings. *See id.* at 153; *see also id.* at 206–07 (concerning the DOE psychologist's testimony as to the benefits of attending in-person AA meetings).