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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: April 13, 2018 ) Case No.: PSH-18-0034  
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Issued: July 16, 2018

**Administrative Judge Decision**

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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."<sup>1</sup> 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) (the "Adjudicative Guidelines"), I conclude that the Individual's security clearance should not be granted.

**I. BACKGROUND**

The individual is employed by a DOE Contractor and applied for a security clearance. When completing a Questionnaire for National Security Positions (QNSP) in January 2016, the individual certified that, in 2008, he had been arrested for Minor in Consumption. An Office of Personnel Management (OPM) investigator spoke with the individual in July 2017 regarding his alcohol consumption and alcohol-related arrest. In November 2017, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the individual. Because the LSO's security concerns were alcohol-related, the LSO had the individual evaluated by a DOE consultant psychologist ("Psychologist"), who determined that the individual was a binge consumer of alcohol and habitually consumed alcohol to the point of impaired judgment.

On February 5, 2018, 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 for access

<sup>1</sup> 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.

authorization. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline G 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 I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of three witnesses—two colleagues, one of whom is also his girlfriend’s father, and his manager—and testified on his own behalf. The DOE presented the testimony of the Psychologist who had evaluated the individual. In addition to the testimonial evidence, the Individual tendered two exhibits into the record (Exs. A-B) and the DOE tendered ten exhibits into the record (Exs. 1-10). The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **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 Adjudicative Guidelines.

The DOE alleges that a Psychologist concluded that the Individual is a habitual or binge consumer of alcohol to the point of impaired judgment on a regular basis of approximately twice monthly. The DOE also alleges that the Individual was charged with being a Minor in Consumption (MIC) in 2008 and that he admitted to drinking four to five beers once or twice a week since December 2011. Adjudicative Guideline G states that “[e]xcessive 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 at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work such as . . . disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder.” *Id.* at ¶ 22(a). Adjudicative Guideline G further provides that a disqualifying security concern may be raised by “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.” *Id.* at ¶ 22(c).

## **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**

The Individual is an applicant for a DOE security clearance. When filling out his QNSP, the Individual reported that in 2008 he was cited for MIC after a college party. Ex. 8 at 32. At his November 2017 PSI, he told the Investigator that he was stopped by the college’s police department while walking home with a friend. Ex. 9 at 10–11. He stated that he had consumed six or seven sixteen-ounce cups of beer over the course of two or three hours. *Id.* at 11–12. The Individual participated in a diversion program that lasted three months. *Id.* at 18–20. His university also required him to participate in a counseling program. *Id.* at 20–21. The Individual complied with all of the requirements imposed on him by the court and the university. *Id.* at 18–22. The counselor recommended that the Individual abstain from alcohol until he reached the legal drinking age, but he only abstained for two months after the incident. *Id.* at 29. He has not had any other involvement with counseling or treatment for alcohol or substance abuse. *Id.* at 27.

The Individual reported his current alcohol consumption to be four to five beers within three to four hours once or twice per week, although he becomes intoxicated once or twice per month by drinking eight or nine beers over the course of three to four hours. *Id.* at 50–51. He has been consuming alcohol in these amounts since December 2011. *Id.* The Individual told the Investigator that he intended to keep his alcohol consumption the same because it was not detrimental to his health and he was not driving while impaired in any way. *Id.* at 54. The Investigator stated that he had been told that the Individual consumed fifteen to thirty beers every weekend. *Id.* at 56. The Individual responded that he did not drink that much and only occasionally would reach close to twenty beers over the course of a weekend. *Id.* He then reported drinking three to ten beers every weekend since September 2016. *Id.* at 56–57. He stated that he only drinks alone when watching sports, which happens about once per week. *Id.* at 59–60.

Because its concerns were alcohol-related, the LSO referred the Individual to a Psychologist for evaluation. Ex. 6. At his evaluation, the Individual stated that his alcohol consumption has decreased since August 2016 and that he now only has one or two beers on each weekend night. Ex. 6 at 6. He again expressed that he did not feel the need to change his level of alcohol consumption. *Id.* at 6–7. He stated that he does not drink as a response to stress and does not drink for the purpose of getting drunk. *Id.* at 7. The Psychologist did not diagnose the Individual with Alcohol Use Disorder, but concluded that he is viewed as a habitual or binge consumer of alcohol

to the point of impaired judgment on a regular basis of approximately twice monthly.<sup>2</sup> *Id.* at 7. The Psychologist did not find adequate evidence of rehabilitation and reported that rehabilitation would entail the Individual's participation in outpatient alcohol treatment group therapy sessions for a minimum of twelve weeks. *Id.* at 8. The Psychologist reported that the Individual had a positive prognosis, at that time. *Id.* at 8.

At the hearing, each of the Individual's witnesses testified that he is trustworthy. Tr. at 89, 117, 141–42. His girlfriend's father testified that, when the Individual asked him about how to proceed with the Psychologist's recommendations, he told the Individual to do what the Psychologist wanted him to do. *Id.* at 100. He had not heard the Individual talk about giving up alcohol forever, but testified that he believed the Individual would "go down the path of responsible drinking." *Id.* at 101. The Individual's colleague also did not testify that the Individual intended to abstain in the future. *Id.* at 124. The colleague testified that the Individual had not consumed alcohol for about fourteen weeks. *Id.* at 115. The Individual's manager testified that the Individual was abstaining from alcohol "at this point," because of the personnel security proceeding. *Id.* at 141. He testified to a belief that the Individual would either abstain or "drink more reasonably" in the future, but admitted that he had not specifically discussed the future plans for alcohol consumption with the Individual. *Id.* at 151.

The Individual testified that he had abstained from alcohol since March 2018. *Id.* at 63. He first saw the Psychologist's report and recommendation on February 28, 2018. *Id.* at 29. His last hangover was at least fourteen weeks before the hearing date. *Id.* at 48. He did not seek the Psychologist-recommended treatment until late May 2018, and enrolled in individual therapy, rather than the recommended group therapy. *Id.* at 26, 28, 63. The Individual testified that he had not understood until the hearing that the recommendation of outpatient group therapy meant that he needed to attend outpatient therapy in a group, instead of individually. *Id.* at 64. In the week prior to his hearing, the Individual attended an evaluation and his first therapy session. *Id.* at 53–54. The Individual testified that he intends to complete a total of fifteen sessions, one of which was the evaluation. *Id.* at 32, 53, 77. However, the Individual had not set up any appointments past the third session and had not signed a commitment to fifteen sessions or paid for sessions in advance. *Id.* at 55, 58. The Individual chose his treatment provider based on the office's proximity to his home and work. *Id.* at 80. He testified that, though no coping skills have been introduced in his therapy, it is only reasonable to assume that they will be part of his treatment. *Id.* at 73, 78.

The Individual testified that after his MIC charge, his counselor told him to abstain from alcohol until he reached the legal drinking age. *Id.* at 44–45. Rather than follow that treatment recommendation, he chose to resume his alcohol consumption before his mandated treatment had ended. *Id.* at 45. The Psychologist asked the Individual if he intended to take action to follow the group therapy recommendation. *Id.* at 64. The Individual responded, "At this time, I'm going down the outpatient therapy path that I am right now [sic]. I don't think I'll change that." *Id.* at 65. After hearing from the Psychologist about group therapy, the Individual later testified that he was willing

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<sup>2</sup> The Psychologist defined habitual consumption of alcohol to the point of impaired judgment as "use of alcohol more than once a month to [blood alcohol content] levels near or at that of legal intoxication." Ex. 6 at 4. The Psychologist defined binge consumption of alcohol as "a pattern of drinking to levels of intoxication by drinking heavy amounts of alcohol in a short time period with the intention of becoming intoxicated or drinking to high levels of intoxication less than once a month, but at least several times a year, that results in impaired judgment." *Id.* at 5.

to complete group therapy if necessary, though he did not understand the difference between the benefits of group and individual therapy. *Id.* at 76.

The Psychologist testified that he had no evidence that the Individual continues to binge drink alcohol. *Id.* at 187. However, the Psychologist testified that the Individual needed to learn coping skills that would help him deal with situations in which he will have choices about alcohol. *Id.* at 161. The Psychologist testified that he had specifically recommended group therapy instead of individual therapy because it has a different dynamic and increased accountability. *Id.* at 159. He testified that it was concerning that the Individual “stated that he did not understand the recommendations until today,” and that when asked if he would adhere to the original recommendation of group therapy, the Individual originally stated that he would not. *Id.* at 166–67. Based on the Individual’s lack of understanding of—and lack of compliance with—the recommendations, the Psychologist revised his recommendation to one year of abstinence, *id.* at 161, or twelve weeks of group therapy followed by a re-evaluation. *Id.* at 166. The Psychologist also found it concerning that the Individual had not told his witnesses that he intended to abstain from alcohol in the future, whether for the next twelve weeks, the next year, or the rest of his life. *Id.* at 160. He testified that the Individual’s prognosis, as of the hearing, was “somewhat guarded.” *Id.* at 172. The Psychologist further testified that, in addition to issues he had previously brought up, the reason for the reduced prognosis was the way the Individual had handled the recommendations, including that the Individual did not actively seek to clarify what they were; that he did not start treatment until just before the hearing; that he did not provide his therapist with the Psychologist’s report; and that he did not provide a report from the therapist at the hearing. *Id.* at 167-68, 191. The Psychologist testified that, had the Individual immediately followed the recommendations, it would have demonstrated a level of commitment to recovery that may have warranted a better opinion. *Id.* at 191.

The Individual, by his attorney, submitted a written closing argument (“Closing Argument”) after the hearing. In this argument, the Individual asserted that, because the Psychologist had no evidence that the Individual was still binge drinking, DOE had no basis for invoking Guideline G. Closing Argument at 1. He asserted that his MIC charge was so long ago as to be unlikely to recur. *Id.* at 2. He also asserted that his fourteen weeks of sobriety proved that he was no longer drinking concerning amounts of alcohol and, thus, the underlying security concerns were mitigated. *Id.* at 2–3. The Individual then proceeded to argue that DOE had attempted to make the proceeding about whether the Individual had immediately performed the Psychologist’s recommendations, stating that “[t]he Adjudicative Guidelines do not envision a federal agency controlling an individual’s course of treatment through the agency’s contractors.” *Id.* at 3-4. The Individual then asserted that the relevant evidence presented consisted of: (1) the Psychologist’s opinion that the Individual is not a binge drinker;<sup>3</sup> (2) the Psychologist’s observation that the Individual has been sober since

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<sup>3</sup> The Psychologist did not offer this opinion. The transcript states:

BY MR. THOMPSON:

Q. [Psychologist’s name] -- is your -- has your determination with respect to [the Individual] -- aside from the recommendation, has your determination that he drinks habitually and -- or binge drinks to a level of bingeing changed?

A. It has not changed.

Q. Okay.

March 2, 2018; (3) the passage of ten years since the Individual's only legal or law enforcement incident related to alcohol; (4) the Individual's acknowledgement of a past pattern of maladaptive alcohol use (a "problem" as he called it in hindsight), and his demonstrated and established fourteen weeks of abstinence; and (5) the Individual's participation in a counseling and treatment program. *Id.* at 4.

## V. ANALYSIS

The issue before me is whether the Individual, as he stands at the time of his hearing, presents an unacceptable risk to national security and the common defense. I must consider all of the evidence, both favorable and unfavorable, in a common sense manner. Because of the strong presumption against granting security clearances, I must deny access authorization if I am not convinced that the DOE's security concerns have been mitigated such that granting the Individual's clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when: (a) "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;" (b) "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 (c) "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."<sup>4</sup> Adjudicative Guidelines at ¶ 23(a)–(c).

### A. The Individual's Alcohol Consumption Habits

In the list of Security Concerns, the DOE cited the Individual's MIC charge. A disqualifying security concern may be raised by "alcohol-related incidents away from work such as . . . disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder." *Id.* at ¶ 22(a). In this case, the Individual received a MIC charge in 2008.

Furthermore, a disqualifying security concern may be raised by "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." *Id.* at ¶ 22(c). In this case, the Individual's history of alcohol use and the Psychologist's opinion demonstrate that the Individual has engaged in habitual or binge consumption of alcohol to the point of impaired judgment.

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A. Well, sorry, Judge. So I do believe that he has not -- when he tells me that he has not consumed alcohol since 3/2, I have no reason to not believe that. So I don't want -- I'm not saying that he continues to binge drink alcohol. I don't have any evidence of that.

Tr. at 187.

<sup>4</sup> The Guidelines also state that Guideline G concerns may be mitigated if the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23(d). However, that is not relevant here because the Individual had only just begun his treatment program as of the hearing date.

## **1. Mitigating Factors A and B**

As to the MIC charge, the Individual is no longer a minor and cannot repeat this conduct. He has also avoided criminal alcohol charges since 2008. Standing alone, it is unlikely that this behavior will recur, and the concern would probably be mitigated under paragraph 23(a) of the Adjudicative Guidelines. However, the DOE also cited the Individual's more recent alcohol consumption habits as presenting a security concern. Abstinence from alcohol can be challenging, and the Individual is to be commended for the time that he has abstained. That said, fourteen weeks is a relatively short period of time to have abstained. The Individual could not state when he last binge drank, simply asserting that he had abstained for fourteen weeks prior to his hearing, but as of his PSI, he was consuming alcohol in concerning quantities on multiple occasions every week. Because there is no evidence to show that this behavior did not continue right up until the Individual abstained from alcohol, and because he last consumed alcohol fairly recently, I conclude that the behavior is not in the distant past, was not infrequent, and did not occur under unusual circumstances.

The Individual has chosen to address the concern almost entirely through abstinence from alcohol. While his efforts are laudable, they fall short. When individuals choose to demonstrate rehabilitation through abstinence, as opposed to other measures like therapy or 12-Step meetings, a full year of abstinence is typically required for a clear and established demonstration. *See In the Matter of: Personnel Security Hearing*, Case No. PSH-17-0041 (a period of modified consumption or abstinence was recommended to show rehabilitation from binge drinking); *In the Matter of: Personnel Security Hearing*, Case No. PSH-18-0018 (one year of abstinence offered as an alternative to a shorter period of abstinence with group treatment). Similarly, in this case, the Psychologist testified that he would recommend a year of abstinence before altering his opinion. I therefore conclude that the Individual has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Accordingly, the Individual has not met the mitigating factors listed in paragraphs 23(a) and (b) of the Adjudicative Guidelines.

## **2. Mitigating Factor C**

While the record does not contain information that the Individual has a history of relapse, the Individual has not, in the opinion of the expert witness (the Psychologist), made satisfactory progress in his treatment program. I note that the Individual offered no testimony, written or oral, from his current therapist, who may well have been qualified as an expert witness. As it stands, I am left to weigh the testimony of an expert witness against that of lay witnesses and the Individual. In this instance, the Psychologist's testimony that the Individual has not begun the recommended treatment or learned the skills or strategies to deal with alcohol was grounded in his observations of the Individual and the Psychologist's expertise. Furthermore, the Psychologist offered strong reasons for changing his prognosis and recommendations. The new recommendations were generally in line with what individuals with Guideline G habitual or binge drinking concerns receive. *See In the Matter of: Personnel Security Hearing*, Case No. PSH-18-0002; *In the Matter of: Personnel Security Hearing*, Case No. PSH-16-0078.

Accordingly, I accept the Psychologist's opinion that the Individual has not made satisfactory progress in treatment and find that he has not met the mitigating factor listed in paragraph 23(c) of the Adjudicative Guidelines.

## **B. Closing Argument Assertions**

### **1. The Evidentiary Basis for Guideline G Concerns**

In his Closing Argument, The Individual argued that his current alcohol use could not present a concern under Guideline G because the evidence demonstrated, and the Psychologist conceded, that the Individual has not consumed alcohol for fourteen weeks. However, that argument misunderstands the nature of Guideline G security concerns. The Individual's alcohol use leading up to the Psychologist's report presented the concern. Once the concern is properly invoked, the individual has the burden to bring forth evidence to mitigate the concern. Not only does the record in this case contain the Psychologist's opinion that the Individual habitually or binge consumed alcohol to the point of impaired judgment, but the Psychologist testified that, notwithstanding the Individual's recent abstinence, the Psychologist's opinion remained unchanged at the date of the hearing. As referenced above, the Psychologist supplied various reasons for why the period of abstinence, standing alone, was insufficient to confidently alter his opinion of the Individual's relationship with alcohol.

### **2. The Focus on Immediate Completion of the Psychologist's Recommendations**

Finally, while the Individual correctly asserts in his Closing Argument that the Psychologist's recommendations were not requirements, he incorrectly asserts that DOE improperly focused on whether he strictly adhered to the letter of those recommendations.

The Psychologist was the only expert who assessed whether the Individual's alcohol consumption was still a concern, and the Psychologist had clearly laid out what he believed was necessary for the Individual's rehabilitation. That said, the recommended outpatient group therapy is not the only way for the Individual to mitigate the DOE's Guideline G security concerns. However, the treatment options the Individual chose—abstinence and, eventually, individual therapy—did not, in fourteen weeks, achieve the expected therapeutic effects of twelve weeks of outpatient group therapy. At the hearing, the Individual's counsel pursued lines of questioning designed to show that fourteen weeks of abstinence, a therapeutic evaluation, and one session of individual therapy had produced sufficient progress. However, the Psychologist testified as to why that was not the case after evaluating the Individual's treatment plan on its merits as presented at the hearing, and I concur in the Psychologist's opinion.

## **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 Guideline G of the Part 710 regulations. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting 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 grant 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.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals