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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: May 30, 2018) Case No.: PSH-18-0045
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Issued: August 14, 2018

Administrative Judge Decision

Steven L. Fine, 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.”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 be restored.

I. BACKGROUND

On August 20, 2017, the Individual was arrested for Reckless Driving and Driving While Under the Influence of Intoxicants (DUI). Ex. 11. The Individual reported this arrest to the local security office (LSO). The LSO conducted a Personnel Security Interview (PSI) of the Individual on November 15–16, 2017. Ex. 13 at i. Because the PSI did not resolve the security concerns raised by the Individual’s DUI arrest, the LSO requested that the Individual undergo a forensic psychological evaluation by a DOE psychologist (The DOE Psychologist), who examined the Individual on January 11, 2018. Ex. 5 at 1.

After the PSI and DOE Psychologist’s evaluation, substantial security concerns about the Individual remained unresolved. Accordingly, the LSO informed the Individual, in a Notification Letter dated April 19, 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

¹The 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.

security concerns under “Guideline G, Alcohol Consumption” and “Guideline J, Criminal Conduct.” DOE Ex. 1.

The Individual requested 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 14 numbered exhibits (DOE Ex. 1–14) into the record and presented the testimony of the DOE Psychologist. The Individual introduced 16 lettered exhibits (Individual Ex. A–P) into the record and presented the testimony of 9 witnesses, including himself. I received a transcript of the proceedings (Tr.) on August 9, 2018.

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 Guidelines G, and J of the Adjudicative Guidelines.

Under Guideline G: Alcohol Consumption, the LSO alleges that the Individual has been diagnosed by the Psychologist with Substance Use Disorder - Alcohol, mild, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth (DSM-5)*, without adequate evidence of rehabilitation or reformation. The LSO further alleged that the Individual had a history of alcohol-related arrests in June 1996 (for Minor in Possession (MIP)) and August 2017 (for DUI). In addition, the Individual admits that he: illegally hired a prostitute while under the influence of alcohol in December 2015; has a history of excessive alcohol consumption; and operated a motor vehicle while under the influence of alcohol on a monthly basis from 2015 to 2017. 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 away from work, such as driving while under the influence . . . 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.” Guideline G at ¶ 22(a). 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). These allegations adequately justify the LSO’s invocation of Guideline G.

Under Guideline J: Criminal Conduct, the LSO cited the Individual’s alcohol-related arrests for DUI and MIP; the Individual’s admission that he hired a prostitute in 2015 while under the influence of alcohol; and the Individual’s admission that he operated a motor vehicle while under the influence of alcohol on a monthly basis from 2015 to 2017. The LSO also cited the Individual’s admission that he had engaged in extensive illegal drug use during the period beginning in 1996 and continuing through 2014. Criminal activity 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. Guideline J at ¶ 30. These allegations of criminal activity adequately justify the LSO's invocation of Guideline J.

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.

IV. FINDINGS OF FACT

The Individual does not contest the LSO's assertions in the Notification Letter. Ex. 2. The Individual admitted to unlawfully using drugs on numerous occasions, most recently in 2014. *See* DOE Ex. 1 at 3.² The Individual was arrested for two (2) alcohol-related events cited in the Notification Letter: MIP in 1996³ and DWI in 2017. *See id.* at 2. The Individual also admits to having exchanged money for sexual intercourse in 2015 while under the influence of alcohol. *See id.*

The Individual began drinking alcohol regularly and experimenting with illegal drugs while in high school. DOE Ex. 13 at 112. From 2015 to the time of his arrest for DWI, the Individual drank to intoxication approximately once per week. *Id.* at 136, 138. The Individual represents that he has not consumed alcohol since his arrest for DWI. *Id.* at 95; Tr. at 118–19. The Individual stated during the PSI that he intends to drink in moderation in the future. DOE Ex. 13 at 100–01.

² The Individual disclosed his use of marijuana on his most recent electronic questionnaire for investigations processing (e-QIP) in January 2017. DOE Ex. 12 at 36. The e-QIP requires applicants to list any illegal drugs they have used in the seven (7) years prior to completing the e-QIP. *Id.* The LSO does not allege that the Individual used any illegal drugs other than marijuana between January 2010 and January 2017. *See* DOE Ex. 1 at 3.

³ The Individual disclosed the MIP arrest on his January 2017 e-QIP. DOE Ex. 12 at 35.

After pleading guilty to DUI, the Individual began participating in a court-ordered deferment program. *See* Ex. 5 at 4. This deferment program includes a twelve-session alcohol education course. *See id.* The Individual also began undergoing individual counseling with a counselor in November 2017. Ex. 13 at 63–65.

The DOE Psychologist conducted a psychological evaluation of the Individual on January 11, 2018. Ex. 5 at 1. The DOE Psychologist issued a report on January 20, 2018, in which he concluded that the Individual met the criteria, set forth in the *DSM-5*, for Alcohol Use Disorder, Mild, in Early Remission, without adequate evidence of rehabilitation or reformation. *Id.* at 7. The DOE Psychologist also concluded that the Individual was a habitual and binge consumer to the point of impaired judgement because the Individual previously drank to intoxication at least once per week and, on the night of his arrest for DUI, believed that it was safe for him to operate a motor vehicle despite having a blood alcohol level approximately two times the legal limit. *Id.* The DOE Psychologist recommended that the Individual abstain from alcohol for at least one year, complete the alcohol education program in which he is already participating, and continue therapy with a counselor at least twice monthly until August 2018. *Id.* at 8.

During the hearing, the Individual described how he began drinking heavily in 2015 after a breakup with his previous girlfriend. Tr. at 122–23. This breakup occurred shortly after the Individual moved to a sparsely populated area, and the Individual partially attributed his drinking to isolation and seasonal depression. *Id.* at 145, 148. Although the Individual’s drinking decreased somewhat between the initial period after his breakup and the 2017 DUI, the Individual testified that “[he] never really got mentally better” *Id.* at 123. The Individual testified that the DUI forced him to go to counseling and obtain the treatment he needed to overcome his problem. *Id.*

After the DUI, the Individual reported pursuing a number of avenues for treatment. The Individual participated in a court-ordered victim impact panel, completed a twelve-week court-ordered substance abuse education course, and participated in private individual counseling with a counselor (Individual’s Counselor). *Id.* at 126–30; *see also* Ex. B. The Individual also reported attending Alcoholics Anonymous (AA) meetings several times each month, and offered copies of his sobriety chips into the record. Tr. at 137, 140; Ex. P.

The Individual testified that, as a result of his sobriety, he was experiencing improved mental clarity and health. Tr. at 142. The Individual described how he had entered into a relationship with a new girlfriend, started a new job, and made new friends by participating in AA and a local food co-op, all of which he believes will provide him with alternatives to drinking to control his seasonal depression. *Id.* at 143–45, 150–51. The Individual indicated that he was unsure as to whether he might try to return to drinking in the future, but harbored reservations that doing so might result in addiction and cost him his sobriety. *Id.* at 142–43.

The Individual offered corroborating testimony from a number of sources regarding the changes he made to his life. A friend with whom the Individual lived after breaking up with his girlfriend in 2015 testified that the Individual was frequently visibly inebriated in the evenings when they lived together, but that he had not seen the Individual consume alcohol since the DUI and had observed positive changes in the Individual’s physical health and demeanor since he stopped

drinking. *Id.* at 75–76, 79. The Individual’s father testified as to the Individual’s sobriety, stating that he had not seen the Individual drink since the DUI and has observed the Individual abstain from alcohol and marijuana in social settings where others were consuming them. *Id.* at 26–27, 29. A colleague and friend of the Individual testified as to the Individual’s remorse after reporting the DUI at work and the Individual’s positive attitude towards abstaining from alcohol since that time. *Id.* at 57, 59. The Individual’s current girlfriend, who has been dating the Individual since March 2018, testified that she has never seen the Individual consume alcohol and that she has seen him refuse alcohol in social settings on numerous occasions. *Id.* at 107–09.⁴

The Individual’s Counselor testified at the hearing as to the Individual’s participation in individual sessions with the Individual’s Counselor and in group sessions overseen by the Individual’s Counselor as a clinical supervisor. *Id.* at 176–78. The Individual’s Counselor described skills the Individual developed through counseling to cope with depression as an alternative to alcohol. *Id.* at 184–85. According to the Individual’s Counselor, the Individual does not require further treatment and his prognosis is positive. *Id.* at 178.

The Individual offered the testimony of a psychologist (Individual’s Psychologist) who the Individual contracted to evaluate him prior to the hearing. Prior to the hearing, the Individual’s psychologist conducted a psychological evaluation of the Individual during which she administered a Substance Abuse Subtle Screening Inventory - Third Edition (SASSI-3) test and a Personality Assessment Inventory (PAI) test. Individual Ex. I at 3. Based on the Individual’s responses on the SASSI-3, which indicated that he had a low probability of having a substance dependence disorder, the Individual’s completion of court-ordered treatment and counseling with the Individual’s counselor, and the results of the interview, the Individual’s Psychologist determined that the Individual had a good prognosis for avoiding problems with alcohol in the future. Individual Ex. I at 4–5. During the hearing, the Individual’s Psychologist testified that she did not disagree with the DOE Psychologist’s diagnosis of the Individual. Tr. at 208. Based upon her evaluation of the Individual, she indicated that she believed that the Individual’s drinking problem started as an effort to cope with clinical depression he suffered in 2015 and 2016, and that the Individual’s treatment regimen and improved network of supportive persons provided him with the resources to manage this problem. *Id.* at 201–03.

The DOE Psychologist observed the testimony of the other witnesses before he testified. The DOE psychologist opined that, although he had originally recommended that the Individual demonstrate twelve months of sobriety before deeming the Individual rehabilitated, the Individual’s eleven months of sobriety was adequate for him to determine that the Individual was rehabilitated in light of the information presented at the hearing. *Id.* at 223–24. The DOE Psychologist noted that, although the Individual’s prognosis was good, it would be hard to predict the Individual’s ability to return to responsible drinking and cautioned the Individual against returning to drinking too quickly. *Id.* at 226–27.

V. ANALYSIS

⁴ The Individual’s current girlfriend is pursuing a master’s degree in counseling. *Id.* at 106.

A. Guideline G Considerations

The Individual acknowledges that his excessive alcohol consumption has clearly led him to exercise poor judgement and fail to control his impulses in the past, and that he has been properly diagnosed with Alcohol Use Disorder, Mild, in Early Remission. Ex. 2; Tr. at 14, 188, 199. However, the Individual asserts that he has mitigated the security concerns by complying with treatment recommendations, obtaining counseling, abstaining from alcohol use, taking positive actions to address his underlying depression, and building a positive social support network.

A person may mitigate security concerns under Guideline G if he or she “acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence [] or responsible use [].” Guideline G at ¶ 23(b). I find that the Individual has mitigated the security concerns raised under Guideline G by acknowledging his alcohol disorder, obtaining counseling, attending AA meetings, and establishing social networks to help him cope with depression through means other than alcohol. *Supra* pp. 4–5. Most importantly, the Individual has established 11 months of abstinence from alcohol. *Id.* The DOE Psychologist deemed this period of abstinence adequate to conclude that the Individual was rehabilitated. *See supra* p. 5. Accordingly, the Individual has satisfied all of the elements of this mitigating criterion.

An individual may also mitigate security concerns under Guideline G 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 Alcoholics Anonymous 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.” Guideline G at ¶ 23(d). The Individual has satisfactorily completed counseling. Tr. at 178. Although the Individual’s eleven-month abstinence from alcohol is one-month less than that originally recommended by the DOE Psychologist in his January 2018 report, the DOE Psychologist testified during the hearing as to the adequacy of that period of abstinence in light of testimony he witnessed at the hearing. *Id.* at 223. Moreover, the Individual’s Counselor, the Individual’s Psychologist, and the DOE Psychologist all testified at the hearing as to the favorable prognosis for the Individual. Tr. at 178, 215, 227. Accordingly, the Individual has satisfied all of the elements of this mitigating criterion.

For the reasons set forth above, I find that the security concerns set forth in the Notification Letter arising under Guideline G have been resolved.

B. Guideline J Considerations

The Individual does not contest any of the facts set forth in the Notification Letter concerning his prior criminal conduct. DOE Ex. 2; Tr. at 14. However, the Individual asserts that his drug use was so long ago, and that his other criminal conduct was sufficiently connected with excessive alcohol use from which he has been rehabilitated, that he has mitigated the security concerns associated with his prior criminal conduct.

The Adjudicative Guidelines provide that an individual may mitigate security concerns related to criminal conduct if “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” Guideline J at ¶ 32(a). The Individual’s arrest for MIP occurred over twenty (20) years ago. DOE Ex. 1 at 2. The Individual’s last illegal drug use occurred in 2013 or 2014, when he used marijuana while attending graduate school. Tr. at 162. *See id.*; *see also* DOE Ex. 1 at 3. Therefore, based on the significant passage of time since the Individual’s arrest for MIP and consumption of illegal drugs, this mitigating factor is applicable to the Individual’s MIP and consumption of illegal drugs.

I further find that the other instances of criminal conduct cited in the Notification Letter are mitigated due to the circumstances under which the Individual engaged in the illegal conduct. Each of these other instances of the Individual’s illegal conduct have a common denominator: they involved alcohol. The Individual’s willingness to hire a prostitute occurred when he was intoxicated. DOE Ex. 1 at 2; *see also* Tr. at 172. Likewise, the Individual’s DUI arrest and other instances where he operated a motor vehicle while intoxicated were the direct result of his Alcohol Use Disorder. As the Individual has demonstrated his rehabilitation from the Alcohol Use Disorder diagnosed by the DOE Psychologist, and his prognosis is favorable, I conclude that the Individual is unlikely to engage in alcohol-related criminal conduct in the future.

An individual may also mitigate security concerns under Guideline J if “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.” Guideline J at ¶ 32(d). In this case, the Individual completed a court-ordered diversion program after his DUI conviction. Individual Ex. C. This program required the Individual to participate on a victim impact panel and to undergo a substance abuse education program. *See supra* p. 4. The Individual expressed remorse for his DUI during the hearing. *See* Tr. at 127. Accordingly, I find this mitigating factor applicable in this case.

For the abovementioned reasons, I find that the security concerns set forth in the Notification Letter arising under Guideline J have been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the security concerns raised under Guidelines G, and J. Accordingly, the Individual has 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 be restored. Either party 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