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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: October 2, 2018) Case No.: PSH-18-0072
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Issued: January 3, 2019

Administrative Judge Decision

Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, 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 security clearance 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. In November 2017, the Individual notified his employer that he voluntarily entered an inpatient treatment program for alcohol abuse. Ex. 6. This information prompted the Local Security Office (LSO) to conduct a personnel security interview (PSI) with the Individual in March 2018. Ex. 9. Because the PSI failed to resolve the security concerns, the LSO requested a psychological evaluation of the Individual by a DOE-consultant psychologist (DOE Psychologist). The DOE Psychologist later submitted a report of his May 2018 assessment (Psychological Evaluation) of the individual. Ex. 7.

The LSO informed the Individual, in a letter dated August 17, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to continue holding a security clearance. See 10 C.F.R. § 710.21. In an attachment to the Notification Letter,

¹ Under the regulations, “access authorization” means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

the LSO explained that the derogatory information raised concerns under Guideline G (Alcohol Consumption). Ex. 1.

The Individual requested an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently convened a hearing pursuant to 10 C.F.R. § 710.25(d), (e) and (g). At the hearing, the LSO submitted ten numbered exhibits (Ex. 1-10) and the Individual submitted three lettered exhibits (Ex. A-C). The Individual presented the testimony of one witness and testified on his own behalf, while the LSO presented the testimony of the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0072 (hereinafter cited as “Tr.”).

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that DOE possessed information that created a substantial doubt concerning his eligibility for a security clearance. In the Notification Letter, the LSO cited Guideline G as the basis for suspending the Individual’s security clearance. Ex. 1.

“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 at ¶ 21. The LSO asserted, among other things, that the DOE Psychologist concluded that the Individual meets the criteria for a diagnosis of Alcohol Use Disorder, Severe not in Remission, without adequate evidence of rehabilitation or reformation under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) and that, despite a recommendation after treatment that he abstain from alcohol and his own concerns about his drinking habits, the Individual continues to consume alcohol. Ex. 1. The DOE Psychologist’s diagnosis of the Individual as suffering from Alcohol Use Disorder, the Individual’s failure to follow treatment advice after his inpatient treatment program, and the Individual’s continued alcohol consumption after his diagnosis justifies the LSO’s invocation of Guideline G security concerns. Adjudicative Guidelines at ¶ 22(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 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 began consuming alcohol at age 20, drinking approximately six to eight beers a night on the weekends. Ex. 9 at 75. For about seven years during his 30s, he did not drink at all. *Id.* at 65. When he began drinking again in the early 1990s, he would consume about six to twelve beers a week, drinking at most four beers in one sitting. *Id.* After a 1997 arrest for Driving While Under the Influence (DWI), the Individual completed alcohol counseling in connection with the disposition of the case. *Id.* at 69-70. DOE conducted PSIs with the Individual on three occasions during his employment regarding issues relating to his alcohol use. *Id.* at 62-63.

During his March 2018 PSI, the Individual indicated that he had previously been a beer drinker, but in the six to eight months prior to entering treatment, the Individual “discovered” vodka and was drinking approximately a pint of vodka about three or four nights a week. Ex. 9 at 17-18. The Individual stated that vodka became a crutch for him to the point where he needed it to relax and go to sleep, although he did not always drink the entire pint on every occasion. *Id.* at 17, 34. The Individual also recognized that changes in his personal life, like his father death and a brain seizure resulting in a change of duties at work, contributed to his increased alcohol consumption. *Id.* at 31-32.

During the PSI, the Individual stated that he would often quit drinking for a week or ten days at a time when he felt like his drinking was affecting his health, however, once the Individual decided he was better, he would return to drinking. *Id.* at 20. After unsuccessful attempts of quitting on his own and his wife expressing concern, the Individual entered an inpatient treatment center in November 2017, staying for five days. *Id.* at 16, 20; *see also* Ex. 6

The Individual left his inpatient treatment program a day early. Ex. 7 at 5. The treatment facility recommended that the Individual abstain from alcohol and gave him medications to support his sobriety, however, the Individual stopped taking those medications shortly after leaving. Ex. 9 at 40-43, 56-57. The treatment facility also recommend that the Individual attend Alcoholics Anonymous (AA) or seek counseling, but during the PSI, the Individual stated he did not do either because he does not “like to hear other people talk about their problems,” and preferred to “take care of [his alcohol issues] on his own.” *Id.* at 45.

After treatment, the Individual indicated that he abstained from alcohol for about a month, but then returned to drinking beer. *Id.* at 48. By March 2018, he was drinking approximately a six pack of beer in a week, and on two or three occasions, he drank vodka, but said that he no longer drank to excess. *Id.* Later in the PSI, however, the Individual admitted that since exiting treatment, he has

reached the point of intoxication on probably two or three occasions. *Id.* at 53. Although the Individual admitted to having concerns about his continued alcohol consumption, he stated that that he did not believe his current pattern of consumption was excessive. *Id.* at 59. He did not see anything wrong with having a beer or two when he got home from work because he likes the taste of beer, but stated he had no future intention of consuming vodka. *Id.* at 59-60.

In May 2018, the DOE Psychologist evaluated the Individual, diagnosing him with Alcohol Use Disorder, severe not in remission. Ex. 7 at 8. As part of this Psychological Evaluation, the Individual submitted to an ethyl glucuronide (EtG) test² and a phosphatidylethanol (PEth) test³. Both tests were positive, detecting recent alcohol consumption. *Id.* at 6. The DOE Psychologist opined that the Individual should abstain permanently from alcohol but recommended that the Individual demonstrate that he could remain abstinent for at least twelve months by submitting to PEth tests every three or four months, submitting to EtG tests randomly at least once every four weeks, or random breath tests every couple of weeks. *Id.* He also recommended that the Individual participate in an intensive outpatient program (IOP) and participate in an AA-type program at least three nights a week. *Id.*

During the hearing, the Individual's Employee Assistance Program (EAP) counselor testified. Tr. at 11-28. She testified that she first met the Individual in September 2018 and has met with him on six occasions. Tr. at 12. She agreed with the Psychological Evaluation and the recommendation that the Individual fully abstain from alcohol and indicated that she was attempting to help him enter an IOP. *Id.* at 13-15. The counselor described her sessions with the Individual as "emotional support" in which she makes referrals and suggestions to support his goals, further stating that it is not "treatment." Tr. at 15-16. The counselor testified that during her sessions with the Individual, she has found him to be honest and open and believes he is slowly heading in the right direction with his recovery despite a recent relapse. *Id.* at 14, 23.

The Individual testified that he does not dispute the diagnosis and recommendations of the DOE Psychologist. Tr. at 29. The Individual further testified that, although he is not completely rehabilitated, he believes his November 2017 treatment was effective because he now has more awareness about his issues with alcohol and has changed his behavior. Tr. at 32. Since leaving treatment, the Individual stated that he has attended at least 29 AA meetings, six EAP sessions, and an initial intake session at an IOP but indicated that logistics would make it difficult for him to complete that program. Tr. at 35; *see also* Exs. A-B. The Individual acknowledged that there was a gap in his AA attendance from May to September 2018, stating that he returned to AA after taking a "moral inventory" and recommitting himself to his recovery. Tr. at 37, 45.

The Individual admitted during the hearing to having consumed alcohol the week prior. Tr. at 37-38. When questioned about the circumstances that led to him drinking, the Individual stated that "alcohol was available" and he decided "what's it going to hurt." Tr. at 43. Similarly, when explaining the circumstances behind his previous relapses in September and October 2018, the Individual stated that after a week or two of sobriety, he believed it would be okay to have a couple of beers. Tr. at 38. Before his most recent relapse, the Individual had been sober for approximately a month. Tr. at 42.

² An EtG test provides information about alcohol consumption over the previous two to four days. Ex. 7 at 6.

³ A PEth test provides information about alcohol consumption over the previous three weeks. Ex. 7 at 6.

The DOE Psychologist testified last, stating that he heard nothing during the hearing to change his opinion from the one outlined in the Psychological Evaluation. Tr. at 48. Because of the Individual's many relapses, the DOE Psychologist further testified that he believes the only way for the Individual to adequately demonstrate his abstinence would be a series of PEth tests every two months as opposed to the opinion of a treating professional. Tr. at 49-50.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented 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. 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).

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual's alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established a pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23(a)-(d).

Nothing in the record indicates that the Individual's alcohol use is so infrequent or long ago that it is unlikely to recur. Guideline G at ¶ 23(a). The Individual has previously had to address concerns about his alcohol consumption with DOE in 1996, 1997, and 2002. Additionally, the Individual's alcohol use is still ongoing, despite his many assertions of his intention to abstain. The Individual has also not successfully completed a treatment program with the required aftercare. Guideline G at ¶ 23(d). Even when he proactively sought treatment in November 2017, the Individual left the six-day treatment program a day early and did not follow any of the treatment facility's recommendations after he left. The Individual has only partially participated in an IOP intake session and, during the hearing, acknowledged that his commuting schedule would make it difficult for him to actually complete this particular program.

Although the Individual acknowledges that he has issues with alcohol, he has provided minimal evidence of actions he has taken to overcome his alcohol problem. Guideline G at ¶ 23(b). Moreover, the Individual is not currently participating in counseling, nor is he making progress in a treatment program. Guideline G at ¶ 23(c). In the year since he initially sought treatment, the Individual could only provide evidence of 29 AA meetings and six EAP sessions. His AA attendance was significantly less than the three times a week as recommended by the DOE Psychologist in May 2018 and his EAP sessions were not the type of counseling envisioned by the DOE Psychologist. Furthermore, the Individual has demonstrated a pattern of poor judgment in deciding that, after short periods of sobriety, he could return to consuming alcohol, often rationalizing to himself that having one or two beers would not hurt. Since leaving inpatient

treatment in November 2017, the Individual has relapsed at least five times, with several periods during which the Individual did not even attempt to abstain from alcohol. The Individual admitted to drinking four days before his March 2018 PSI, the night before his May 2018 Psychological Evaluation, and the week before the November 2018 hearing, demonstrating that he does not yet have control of his alcohol issues. *See* Ex 9 at 46-47; Ex 7 at 5-6, Tr. at 37-38. Based on the foregoing, I cannot find that the Individual has mitigated the security concerns raised under 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 Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of 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.

Brooke A. DuBois
Administrative Judge
Office of Hearings and Appeals