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

In the Matter of: Personnel Security Hearing)
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Filing Date: January 31, 2019) Case No.: PSH-19-0009
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Issued: April 26, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be not be restored.

I. BACKGROUND

On February 26, 2018, the Individual, a DOE Security Clearance holder, submitted an Incident Report to the Local Security Office (LSO) indicating that he had been arrested and charged with Driving Under the Influence (DUI) on February 24, 2018. The LSO conducted a Personnel Security Interview (PSI) of the Individual on May 16, 2018, during which the Individual admitted a pattern of excessive alcohol use, and a prior arrest for DUI on February 27, 2011. He further admitted that he had consumed a large quantity of alcohol prior to the February 24, 2018, incident. Because this derogatory information raised concerns about the Individual’s alcohol use and psychological state, the LSO asked the Individual to undergo a forensic psychological evaluation by a DOE Psychologist (the Psychologist). The Psychologist conducted an evaluation of the Individual on July 18, 2018, and on July 25, 2018, he issued a report concluding that the Individual “binge consume[s] alcohol to the point of intoxication.” Ex. 8 at 6. On the basis of the Individual’s

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.

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two DUI arrests, as well as the Psychologist's opinion, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on February 1, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his friend, his co-worker, his mother-in-law, his brother-in-law, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-19-0009 (hereinafter cited as "Tr."). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as "Ex."). The Individual submitted four exhibits, marked as Exhibits A through D.

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). Specifically, the LSO alleges that the Individual has been found to "binge consume alcohol to the point of intoxication." The LSO further alleges that the Individual has a history of two DUI arrests. 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 (1) "alcohol-related incidents away from work, such as driving while under the influence . . . 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)); and (2) "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder" (Guideline G at § 22(c)). These allegations adequately justify the LSO's invocation of Guideline G.

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

On February 27, 2011, police arrested and charged the Individual with DUI. At the time of this arrest, the Individual’s Blood Alcohol Level (BAL) was measured as .08 and .079. Ex. 11 at 80. Seven years later, on February 24, 2018, police again arrested and charged the Individual with DUI. At the time of this arrest, his BAL was measured as .14 and .13. Ex. 10 at 36-37. The Individual admitted consuming approximately ten beers and six mixed drinks in the eight-and-a-half-hour period before this arrest. Ex. 10 at 27. The Individual claimed that he did not feel intoxicated at the time of this DUI. Ex. 10 at 31-32.

Because of the security concerns raised by these incidents, the Individual was evaluated by the Psychologist at the LSO’s request. On July 25, 2018, the Psychologist issued a report in which he concluded that the Individual “does binge consume alcohol to the point of impaired judgment.” Ex. 8 at 6-7. The Psychologist opined that the pattern of alcohol consumption reported by the Individual indicates that he is becoming intoxicated approximately once a month. Ex. 8 at 5. The Psychologist also reported that the Individual’s stated future intention is to continue consuming alcohol at his “usual” level. Ex. 8 at 5. Even though the Psychologist found that the Individual did not have an emotional, mental, or personality condition or conditions that can impair his judgment, stability, reliability or trustworthiness, or meet the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)* for Alcohol Use Disorder, he recommended that the Individual undergo an Intensive Outpatient Program (IOP) with an aftercare component, and participate in a 12-step program such as Alcoholics Anonymous (AA). Ex. 8 at 7. The Psychologist further opined that the Individual must demonstrate that he can remain abstinent for a minimum of nine months. Ex. 8 at 7.

On November 16, 2018, the Individual was evaluated by an Addiction Medicine facility. Ex. 2 at 3. On that date, the evaluator issued a report in which he concluded: “After completing a thorough assessment no CD (Chemical Dependency) diagnosis has been met so you were not recommended to participate in the CD treatment program. You have however agreed to meet individually for at least the next 2-4 weeks for AOD (Alcohol or Drug) education [and you have] agreed to submit to random UDS (urine drug screens). . . .” Ex. 2 at 3.

V. ANALYSIS

At the hearing, the Individual testified that he does not believe he has, or has had, a problem with alcohol. Tr. at 62. The Individual testified that he has not consumed alcohol since November 6, 2018, about four and a half months prior to the hearing. Tr. at 72. He testified that he did not feel inebriated or intoxicated at the time of his 2011 DUI arrest. Tr. at 65. He similarly testified that he did not feel intoxicated or inebriated at the time of his 2018 DUI arrest, despite having consumed sixteen alcoholic beverages over an eight-hour period. Tr. at 67. Instead, he reported experiencing a “slight buzz,” and believing that he was able to safely operate a motor vehicle. Tr. at 67-68. The Individual described a number of actions that he has taken to address the LSO’s concerns about his alcohol consumption. He signed a Recovery/Abstinence contract with his employer on November 8, 2018, and has honored it. Tr. at 72-73; Ex. 2. The Individual testified that he has not had to struggle to abstain from alcohol use. Tr. at 81. The Individual testified that he had been evaluated by a mental health professional at the Addiction Medicine facility and that the mental health professional concluded that he did not have an alcohol problem. Tr. at 74, 94. Nevertheless, the Individual attended an alcohol education class on a daily basis for one month, and two AA meetings every week for four weeks as well. Tr. at 73, 76-77; Ex. A. The Individual testified that he does not have an alcohol problem, but recognizes that alcohol has caused problems in his life. Tr. at 75. However, the Individual further testified that he now realizes that he cannot accurately judge the amount of intoxication he is experiencing. Tr. at 69, 96.

The Psychologist, observed the testimony of the other witnesses before he testified. He then testified that he originally concluded that the Individual had consumed excessive amounts of alcohol on a regular basis. Tr. at 106-7. However after hearing the Individual’s testimony, he was convinced that the Individual was now adequately rehabilitated, and that the Individual’s prognosis is “good.” Tr. at 109, 111. The Psychologist noted that the Individual had been abstaining from alcohol use for four months,² and had previously been tapering his alcohol use. Tr. at 109. The Psychologist opined that the Individual did not need any further treatment. Tr. at 109-110. The Psychologist further testified that he believes that the Individual no longer habitually or binge consuming alcohol to the point of impaired judgment. Tr. at 111. The Psychologist testified that he believes that the Individual now realizes that he cannot trust himself to accurately assess his level of impairment resulting from his alcohol intake. Tr. at 112-113.

The Individual has presented evidence that he has taken actions to address the LSO’s concerns about his alcohol use; including attending an IOP, attending AA meetings, obtaining an evaluation for alcohol problems, and abstaining from alcohol use for at least four and a half months. Most importantly, the Individual has shown that he recognizes that he cannot trust himself to accurately assess his level of impairment resulting from his alcohol intake. These factors convinced the Psychologist that the Individual has been rehabilitated from his habitual or binge consumption of alcohol to the point of impaired judgment, despite the fact that he had originally recommended that the Individual abstain from alcohol use for at least nine months, and attend an IOP.

In the present case, the Psychologist specifically found that the Individual does not meet the criteria for any diagnosis recognized by the mental health professions.³ I find that opinion persuasive, given the Psychologist’s education, training, and experience in the area of mental health.

² The Individual testified that he last used alcohol on November 6, 2018, and the hearing occurred on March 26, 2019, a period which exceeds four and a half months.

³ A conclusion shared by other mental health professionals who evaluated the Individual as well. Tr. at 74, 94; Ex. C.

The Psychologist, after eliciting information from the Individual indicating that he was consuming alcohol to the point of intoxication on a monthly basis, further opined in his report that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment. I find that opinion persuasive as well. However, after observing the hearing testimony of the Individual and his witnesses, the Psychologist opined that the Individual had been “rehabilitated” from his habitual or binge consumption. I was not similarly persuaded.

Under 10 C.F.R. § 710.27 it is ultimately the responsibility of the Administrative Judge to render a favorable or unfavorable determination in proceedings under § 710.26, which mandates that I 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.

Guideline G, Section 23, sets forth four conditions that “could mitigate security concerns” raised under Guideline G. I find that none of these conditions are sufficiently present in the instant case to mitigate the security concerns raised by the LSO under Guideline G regarding the Individual’s habitual or binge consumption of alcohol on a monthly basis, and his two DUIs.

Section 23(a) provides that security concerns raised under Guideline G can be mitigated if: “so much time has passed or the behavior is 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.” I remain concerned that the Individual might return to his pattern of excessive alcohol consumption, and that the Individual’s attitude during his hearing testimony showed that his judgment continues to be impaired. While the Individual testified that “[a]lcohol has caused problems in my life, and I have caused problems to myself in my life with alcohol,” the Individual also repeatedly denied ever having a problem with alcohol, despite his history of two DUIs. Tr. at 62, 69, 75.

While the Individual is correct that he does not have an alcohol use disorder, he has continued to exhibit little insight into how his use of alcohol has contributed to his current and past legal issues, or the danger that his inability to regulate his alcohol consumption placed upon him, his passengers, and other innocent bystanders when he, on at least two occasions, operated a motor vehicle while intoxicated. For example, during the hearing, the Individual continued to maintain that he was not intoxicated or inebriated at the time of those arrests, despite the evidence to the contrary showing that his BAL was at least .079, in 2011, and at least .139 in 2018. Tr. at 65, 67-68. While the Individual recognized that he is not a good judge of how intoxicated he is, he subsequently maintained that he can trust himself to know whether or not he can safely operate a motor vehicle. Tr. at 69, 94, 96. Even though the Individual attended an alcohol education class, he reported that he learned nothing about his relationship with alcohol from the class, other than that he does not have a problem with alcohol. Tr. at 75. The Individual further indicated that he plans to resume using alcohol once his abstinence agreement with his employer expires, although he plans to avoid his past consumption pattern. Tr. at 86-87. However, he did not explain how he expects to avoid

returning to his past consumption pattern, other than indicating that he was considering the purchase of a breathalyzer device. Tr. at 96.

Section 23(b) provides that security concerns raised under Guideline G can be mitigated if: “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.” The Individual has not clearly acknowledged his pattern of maladaptive alcohol use. Instead, he claims that he was not actually impaired at the time of his two DUI’s. Nor has the Individual acknowledged that his pattern of drinking to intoxication on a monthly basis was problematic. Nevertheless, the Individual did attend an alcohol education class and a number of AA meetings, and has abstained from alcohol use for over four months. However, as discussed above, the Individual has apparently learned little from those classes. Moreover, the four-and-a-half months of abstinence achieved by the Individual has not been sufficient to demonstrate a clear and established pattern of modified consumption or abstinence, since the Individual has not articulated any intent or actions that he plans to take in order to avoid returning to his past alcohol consumption patterns once he begins using alcohol again.

Section 23(c) provides that security concerns raised under Guideline G can be mitigated if: “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.” The Individual is currently not participating in counseling or a treatment program. While the Individual has attended an alcohol education class, that is not the same as a treatment program. *See e.g.* Ex. 2 (stating that the Individual does not have a sufficiently serious alcohol problem to merit enrolling him in an alcohol treatment program, but recommending that the Individual attend an alcohol education program, instead).

Section 23(d) provides that security concerns raised under Guideline G can be mitigated if: “the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.” As discussed above, the Individual has not completed a treatment program, and has not established pattern of modified consumption or abstinence.

Accordingly, I find that the security concerns arising under Guideline G from the Individual’s habitual or binge consumption of alcohol to the point of impaired judgment, and two DUIs, have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not sufficiently mitigated the security concerns raised under Guideline G. Accordingly, the Individual has not 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 not be restored. The parties 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