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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: March 1, 2019) Case No.: PSH-19-0012
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Issued: May 6, 2019

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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, "Procedures for Determining Eligibility for Access to Classified Matter and 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 granted.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual completed an Electronic Questionnaire for Investigation Processing (e-QIP) in December 2015. DOE Ex. 9 at 72. On February 22, 2016, the Individual participated in an interview with an Office of Personnel Management investigator (the Investigator) and disclosed that he had previously engaged in binge drinking. *Id.* at 87–88. Based on the information that the Individual provided to the Investigator, the Local Security Office (LSO) conducted a personnel security interview (PSI) of the Individual on June 5, 2018. DOE Ex. 7 at i. During the PSI, the Individual reported that, from 2016 to the date of the PSI, he drank to intoxication approximately twice each week. *Id.* at 126–28.

Based on the Individual's statements during the PSI, the LSO required the Individual to participate in a psychiatric evaluation. *See* DOE Ex. 4 at 1. On August 24, 2018, a DOE-contracted psychologist (DOE Psychologist) conducted a clinical interview of the Individual. DOE Ex. 5 at 3. Following the clinical interview, the DOE Psychologist issued a psychological assessment (Report) in which she concluded that the Individual consumed alcohol habitually to excess, which raised concerns about his judgement, reliability, and trustworthiness.

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.

The PSI and Report established substantial security concerns about the Individual. Accordingly, the LSO informed the Individual, in a notification letter dated February 8, 2019 (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 G, Alcohol Consumption." DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to Part 710 of Title 10 of the Code of Federal Regulations (C.F.R.). 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 concerning the matter. At the hearing, the LSO introduced nine (9) numbered exhibits (DOE Ex. 1-9) into the record and presented the testimony of the DOE Psychologist. The Individual introduced two lettered exhibits (Ind. Ex. A-B) into the record and presented the testimony of four (4) witnesses, including himself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as the basis for denying the Individual a security clearance. DOE Ex. 1.

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Guideline G at ¶ 21. The Notification Letter listed as relevant facts: the Individual admitted during the PSI that, from 2016 to the present, he became intoxicated once per week from drinking beer and once per week from drinking whiskey or gin; and the DOE Psychologist determined that the Individual drinks to intoxication as a customary practice and consumes alcohol habitually to excess, which raises concerns about his judgement, reliability, and trustworthiness. DOE Ex. 1. The Individual's habitual and binge consumption of alcohol to the point of impaired judgement justifies the LSO's invocation of Guideline G. Guideline G 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.

IV. FINDINGS OF FACT

The Individual began drinking alcohol while attending college, at which time he consumed an average of five (5) beers to intoxication approximately three (3) to four (4) days each week and an average of three (3) shots of hard alcohol to intoxication approximately once each week. DOE Ex. 8 at 107–11. The Individual reported during the PSI that he reduced his alcohol consumption to approximately ten (10) drinks each week in 2010 after he was forced to withdraw from college due to his academic performance and began living at his parents' home; he drank to intoxication approximately three (3) days each week while living with his parents. *Id.* at 114, 117.

During the PSI, the Individual reported that he had made a concerted effort to reduce his drinking for health reasons beginning in 2016. *Id.* at 123. According to the Individual, he drank to intoxication approximately two (2) times each week, usually in the company of his girlfriend, from 2016 to the date of the PSI in June 2018. *Id.* at 126–28.

The Individual indicated during the PSI that alcohol consumption has had negative effects on his life in several respects. The Individual stated that excessive alcohol consumption may have adversely affected his academic performance, caused him to experience hangovers and blackouts, and forced him to miss work and school. *Id.* at 134, 141, 149. The Individual admitted to consuming alcohol on the job while working for a prior employer, even though he knew that doing so was “probably not something my employer would condone,” and hiding the volume of his alcohol consumption from his parents. *Id.* at 150–51, 161. The Individual explained that he had persisted in his alcohol consumption, despite its negative impact on his life, to “escape frustrations and anger,” opined that he did not believe that he had a problem with alcohol, and expressed the view that “the amounts of alcohol he consumed are under control.” *Id.* at 139, 164. The Individual stated during the PSI that he had no plans to change the volume of alcohol he consumed at that time. *Id.* at 165.

The DOE Psychologist's Report indicated that the Individual struggled to provide a consistent accounting of the level of his alcohol consumption during the clinical interview. DOE Ex. 5 at 6. The Individual reported to the DOE Psychologist that he last drank to intoxication on the weekend prior to the clinical interview. *Id.*² The DOE Psychologist concluded that, based on the Individual's self-reported intoxication multiple times each month, the Individual habitually consumed alcohol to excess. *Id.* at 7, 9. The DOE Psychologist recommended that the Individual demonstrate rehabilitation by abstaining from alcohol consumption for a period of at least six (6) months, complete an intensive outpatient program of four (4) to eight (8) weeks in length, and participate in an aftercare program for an unspecified period of time. *Id.* at 9.

² The DOE Psychologist calculated the Individual's blood alcohol content at .07g/210L based on the Individual's account of drinking five (5) beers with an estimated six percent (6%) alcohol by volume over a period of five (5) hours.

At the hearing, the Individual testified that he had followed all of the DOE Psychologist's treatment recommendations to demonstrate his rehabilitation. The Individual testified that he agreed with the DOE Psychologist's determination that he had engaged in "habitual binge drinking" in the past and described how he enrolled in treatment immediately after meeting the DOE Psychologist for the clinical evaluation. Hearing Transcript (Tr.) at 47, 52. The Individual offered his own testimony and a letter from an employee of an addiction treatment organization to establish that he had entered treatment just three (3) days after the clinical evaluation with the DOE Psychologist, completed a twelve-week early recovery program, and attended sixteen (16) weeks of aftercare. Ind. Ex. A; Hearing Transcript (Tr.) at 53–54. The Individual explained that he attended the early recovery program three (3) times weekly, including two (2) weekly group therapy sessions to discuss issues and triggers and one (1) educational session. Tr. at 54–55. The Individual also testified that he participated in Alcoholics Anonymous (AA) meetings three (3) times each week during the early recovery program and once each week during his participation in aftercare, and provided attendance sheets to verify his attendance at the AA meetings. *Id.* at 55–56; Ind. Ex. B. The Individual reported that he had found both his treatment and AA helpful, but that he did not believe that he needed any further treatment. Tr. at 69.

The Individual testified that he had not consumed any alcohol from August 27, 2018, to the date of the hearing. *Id.* at 72. According to the Individual, he felt mild withdrawal symptoms at first, but did not experience any serious obstacles to his sobriety after those first few weeks. *Id.* at 62, 72–73. The Individual explained that he wished to return to moderate social drinking, described a rules-based approach to monitoring his alcohol consumption according to which he would never consume more than four (4) drinks in one sitting or more than fourteen (14) drinks in one week and would use an application on his phone to alert him if his blood alcohol level reached .04g/210L so that he would stop drinking. *Id.* at 63–66. The Individual testified that he believed that his system would allow him to drink socially while providing him with objective metrics to prevent him from returning to problematic drinking. *Id.*

The Individual's girlfriend testified at the hearing that she had not observed the Individual drinking alcohol since August 2018. *Id.* at 29–30. According to the Individual's girlfriend, the Individual had routinely consumed alcohol with her in the past and at times she had felt concerned about the Individual's alcohol consumption. *Id.* at 26–27. The Individual's girlfriend indicated that the Individual had discussed his strategy for monitoring his alcohol consumption in the future with her, and that she believed that his strategy would prove to be an effective one. *Id.* at 35–36. A friend and former roommate of the Individual also testified at the hearing that he had observed the Individual refuse drinks offered to him in the months leading up to the hearing. *Id.* at 12. The Individual's supervisor testified that she had never observed the Individual under the influence of alcohol in the workplace. *Id.* at 41–42. All of the Individual's witnesses testified that they believed him to be reliable and trustworthy. *Id.* at 15–16, 36–37, 43.

The DOE Psychologist, after observing the entirety of the hearing, testified that she believed that the Individual had exceeded her treatment recommendations. *Id.* at 82–83. The DOE Psychologist opined that the Individual's approach to monitoring the volume of his alcohol consumption was analytical and earnest, and that, in light of the Individual's prior difficulties in estimating how much alcohol he had consumed, she believed that this approach would help the Individual to remain mindful of the volume of alcohol that he consumed. *Id.* at 80–81, 83. The DOE Psychologist further opined that she had a high degree of confidence that the Individual could safely return to moderate

drinking as long as he remained vigilant, and that he had a low risk of relapsing into problematic drinking. *Id.* at 83.

V. ANALYSIS

A. Guideline G Considerations

The Individual did not contest any of the contents of the Notification Letter or the Report. *Id.* at 6, 47. Instead, the Individual asserted that he has complied with the DOE Psychologist's treatment recommendations and mitigated the security concerns asserted by the LSO under Guideline G.

An Individual may mitigate security concerns under Guideline G if:

- (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;
- (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; or,
- (d) 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.

Guideline G at ¶ 23(a)–(d).

In this case, the Individual acknowledged his pattern of problematic drinking, took immediate action to address his problematic alcohol consumption following the clinical interview with the DOE Psychologist, abstained from alcohol for over seven (7) months as of the date of the hearing, and completed the treatment regimen recommended by the DOE Psychologist. The DOE Psychologist testified that the duration of the Individual's treatment with the addiction treatment organization and abstinence from alcohol exceeded her recommendations for demonstrating rehabilitation. Moreover, the DOE Psychologist opined that the Individual could safely resume moderate alcohol consumption and had a low risk for returning to problematic alcohol consumption.

In addition, I find it noteworthy that the DOE Psychologist testified that the Individual's problematic alcohol consumption during college likely would have met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, but that the Individual did not meet the diagnostic criteria for Alcohol Use Disorder when she conducted the clinical interview in August 2018. Tr. at 78. Thus, I find that the record shows that the Individual has established a pattern of reduced alcohol consumption over a period of several years, not just the seven (7) months during which the Individual abstained from alcohol prior to the hearing. Accordingly, I find that the Individual has satisfied the mitigating conditions set forth in paragraphs 23(b) and 23(d) of the Adjudicative Guidelines.

Therefore, I conclude that the Individual has resolved the security concerns asserted by the LSO under Guideline G of the Adjudicative Guidelines.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of 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 brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual should be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals